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MARTINES FRUITS & VEGETABLES, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTINES FRUITS & VEGETABLES,
INC., a California Corporation,

Plaintiff,

vs.

AMERICAN PRESIDENT LINES, LTD.,
a Delaware Corporation, ROBERT
NAKO ENTERPRISES, INC, a California
Corporation, dba YAMKO TRUCK
LINES, and DOES 1 through DOES 25,
inclusive,

Defendants.

Case No. 07cv7082

COMPLAINT FOR DAMAGES

1. Breach of Contract/Bill of Lading (Damage to Cargo - APL)
2. Negligence (APL)
3. Breach of Contract/Bill of Lading (Damage to Cargo - Yamko)
4. Negligence (Yamko)
5. Strict Liability (Yamko)

Plaintiff, MARTINES FRUITS & VEGETABLES, INC. alleges:

JURISDICTION AND VENUE

1. This court has jurisdiction of this case pursuant to the Carriage of Goods by Sea Act of 1936 as revised [46 U.S.C. Section 30701] ("COGSA") and pursuant to 28 U.S.C. Sections 1331 and 1333. Venue is arguably proper pursuant to the forum selection clause of defendant American President Lines, Ltd.'s standard terms of and conditions on the Bill of

1 Lading on American President Lines, Ltd.'s website, a true and correct copy of which is attached
2 as EXHIBIT K to this complaint.

3 **PARTIES**

4 2. Plaintiff MARTINES FRUITS & VEGETABLES, INC. ("Plaintiff") is a
5 California Corporation duly organized, incorporated and existing under and by virtue of the laws
6 of the State of California, with its principal place of business located at 11549 Los Osos Valley
7 Road, San Luis Obispo, California, San Luis Obispo County, California. Plaintiff is engaged
8 primarily in the business of selling and marketing agricultural commodities, including peas.
9 Some of the agricultural commodities marketed by Plaintiff are imported from other countries,
10 including Peru.
11

12 3. Upon information and belief, Defendant AMERICAN PRESIDENT LINES,
13 LTD. ("APL") is a Delaware Corporation, duly organized and existing under and by virtue of the
14 laws of the State of Delaware, with a principal business address of 1111 Broadway, Oakland, CA
15 94607. APL regularly conducts substantial business operations within the State of California,
16 and within the county of San Luis Obispo. APL is in the business of shipping goods, including
17 agricultural commodities, between foreign ports and ports within the United States and the State
18 of California.
19

20 4. Upon information and belief, Defendant ROBERT NAKO ENTERPRISES, INC.,
21 d.b.a YAMKO TRUCK LINES ("Yamko") is a California Corporation, duly organized and
22 existing under and by virtue of the laws of the State of California, with its principal place of
23 business at 6925 Cherry Ave., Long Beach, California. Yamko regularly conducts substantial
24 business operations within the State of California, and within the county of San Luis Obispo.
25 Yamko is in the business of transporting goods, including agricultural commodities, by truck
26
27

1 between locations within the United States and within the State of California. Yamko is an
2 inland common carrier of goods.

3 5. Plaintiff is ignorant of the true names and capacities of the Defendants
4 denominated herein as Does 1 through 25, inclusive, and so sues said Defendants under such
5 fictitious names. Plaintiff will amend this Complaint to set forth the true names and capacities of
6 such Defendants once the same have become known to it. Plaintiff is informed and believes and
7 thereon alleges that each of these fictitiously named Defendants was at all relevant times the
8 agent, servant or employee of APL or Yamko and acting in the course and scope of such agency,
9 service or employment relationship in engaging in the conduct alleged herein, or that such
10 defendants claim some right, title, estate, lien or interest in the hereinafter-described property
11 adverse to Plaintiff's title to that property.
12

13 **SHIPMENT APL #90032620 / Yamko # 00145922**
14

15 6. On or about November 1, 2006, Plaintiff, as owner and consignee, by and through
16 its authorized representatives and agents (Andean Produce and Ransa Logistics), delivered to
17 APL certain cargo consisting of 3,520 boxes of peas. Specifically, Plaintiff delivered to APL
18 740 boxes of Snow Peas and 2,816 boxes of Sugar Daddy Peas (with respect to this shipment,
19 "the cargo"). The cargo was delivered to APL in Lima, Peru for transportation from the Port of
20 Callao, Peru to the Port of San Pedro, California. The cargo was transported under Bill of
21 Lading Number 900032620, a copy of which is attached as EXHIBIT A to this Complaint. APL
22 agreed to transport the cargo at a temperature not to exceed + 2 degrees Celsius, with closed
23 ventilation, 95% humidity, in a refrigerated container, and in a controlled atmosphere.
24

25 7. Plaintiff, by and through its authorized representatives and agents, delivered the
26 cargo to APL in good order and condition. The cargo was loaded on to the vessel APL Balboa,
27 V032.

1 8. On or about November 14, 2006, the cargo arrived in San Pedro, California
2 aboard the vessel APL Turquoise V072. Upon arrival in San Pedro, California, Plaintiff
3 delivered the cargo to Defendant Yamko, who transported the cargo under Yamko Freight Bill #
4 00145922, which is attached as EXHIBIT F to this Complaint. Upon information and belief, the
5 cargo was in good condition when it was received by Yamko. Yamko transported the cargo to
6 Plaintiff at Guadalupe, California on November 16, 2006. Yamko agreed and undertook to
7 transport the cargo in refrigerated containers and to deliver the cargo in good order and
8 condition.
9

10 9. Upon arrival in Guadalupe, Plaintiff determined that the cargo was badly
11 damaged and wholly unmarketable. The cargo did not arrive in good order and condition. On
12 November 16, 2006, Plaintiff obtained an inspection of the cargo by a representative of the U.S.
13 Department of Agriculture, who confirmed the damage to the cargo. Plaintiff then gave timely
14 and prompt notification of the damage to the cargo to APL and provided APL with the
15 opportunity to inspect the damage.
16

17 10. The shipping container for the cargo contained a temperature recorder, placed in
18 the container by Plaintiff and Plaintiff's agents prior to delivery of the cargo to APL. The
19 temperature recordings were obtained by Plaintiff upon delivery of the cargo to Guadalupe,
20 California on November 16, 2006. The recordings reflect that, for extended periods of time,
21 while in the possession of APL and Yamko the cargo was transported at a temperature
22 significantly above 2 degrees Celsius. The manner in which the cargo was handled by APL and
23 Yamko was the cause of the damage to the cargo.
24

25 11. On or about November 16, 2006 and for the period shortly thereafter the market
26 price for Snow Peas from Peru was between \$13.00 and \$16.00 per carton. During that period of
27 time, the market price for Sugar Snap Peas from Peru was approximately \$18.00 per carton.

1 12. As a result of the damage to the cargo shipped under APL Bill of Lading Number
2 900032620 and Yamko Freight Bill # 00145922, Plaintiff has suffered damages of
3 approximately \$62,528.00 dollars.

4 13. Plaintiff, and its agents, performed all conditions precedent required by Bill of
5 Lading Number 900032620 and required by Yamko Freight Bill # 00145922. Defendant APL
6 has refused Plaintiff's Demands for payment for the cargo that was damaged.
7

8 **SHIPMENT APL # 90032627/ Yamko # 001459224**

9 14. On or about November 1, 2006, Plaintiff, as owner and consignee, by and through
10 its authorized representatives and agents, delivered to APL certain cargo consisting of 3,520
11 boxes of peas. Specifically, Plaintiff delivered to APL 740 boxes of Snow Peas and 2,816 boxes
12 of Sugar Daddy Peas (with respect to this shipment, "the cargo"). The cargo was delivered to
13 APL in Lima, Peru for transportation from the Port of Callao, Peru to the Port of San Pedro,
14 California. The cargo was transported by APL under Bill of Lading Number 900032627, a copy
15 of which is attached as EXHIBIT B to this Complaint. APL agreed to transport the cargo at a
16 temperature not to exceed + 2 degrees Celsius, with closed ventilation, 95% humidity, in a
17 refrigerated container, and in a controlled atmosphere.
18

19 15. Plaintiff, by and through its authorized representatives and agents, delivered the
20 cargo to APL in good order and condition. The cargo was loaded on to the vessel APL Balboa,
21 V032.
22

23 16. On or about November 14, 2006, the cargo arrived in San Pedro, California
24 aboard the vessel APL Turquoise V072. Upon arrival in San Pedro, California, Plaintiff
25 delivered the cargo to Defendant Yamko, who transported the cargo under Freight Bill #
26 00145924, which is attached as EXHIBIT G to this Complaint. Upon information and belief, the
27 cargo was in good condition when it was received by Yamko. Yamko transported the cargo to

1 Plaintiff at Guadalupe, California on or about November 16, 2006. Yamko agreed and
2 undertook to transport the cargo in refrigerated containers and to deliver the cargo in good order
3 and condition.

4 17. Upon arrival at Guadalupe, Plaintiff determined that the cargo was badly damaged
5 and wholly unmarketable. The cargo did not arrive in good order and condition. On November
6 20, 2006, Plaintiff obtained an inspection of the cargo by a representative of the U.S. Department
7 of Agriculture, who confirmed the damage to the cargo. Plaintiff then gave timely and prompt
8 notification of the damage to the cargo to APL and provided APL with the opportunity to inspect
9 the damage. APL authorized Plaintiff to dispose of the entire shipment and Plaintiff disposed of
10 the product.
11

12 18. The shipping container for the cargo contained a temperature recorder, placed in
13 the container by Plaintiff and Plaintiff's agents prior to delivery of the cargo to APL. The
14 temperature recordings were obtained by Plaintiff upon delivery of the cargo to Guadalupe,
15 California on November 16, 2006. The recordings reflect that, for extended periods of time,
16 while in the possession of APL and Yamko, the cargo was transported at a temperature
17 significantly above 2 degrees Celsius. The manner in which the cargo was handled by APL and
18 Yamko was the cause of the damage to the cargo.
19

20 19. On or about November 16, 2006 and for the period shortly thereafter the market
21 price for Snow Peas from Peru was between \$13.00 and \$16.00 per carton. During that period of
22 time, the market price for Sugar Snap Peas from Peru was approximately \$18.00 per carton.
23

24 20. As a result of the damage to the cargo shipped under APL Bill of Lading Number
25 900032620 and Yamko Freight Bill Number 00145924, Plaintiff has suffered damages of
26 approximately \$62,528.00 dollars.
27

1 21. Plaintiff, and its agents, performed all conditions precedent required by Bill of
2 Lading Number 900032627 and required by Yamko Freight Bill Number 001459224. Defendant
3 APL has refused Plaintiff's demands for payment for the cargo that was damaged.

4 **SHIPMENT APL # 90032664 / Yamko # 00145934**

5 22. On or about November 1, 2006, Plaintiff, as owner and consignee, by and through
6 its authorized representatives and agents, delivered to APL certain cargo consisting of 3,520
7 boxes of peas. Specifically, Plaintiff delivered to APL 1056 boxes of Snow Peas and 2,464
8 boxes of Sugar Daddy Peas (with respect to this shipment, "the cargo"). The cargo was
9 delivered to APL in Lima, Peru for transportation from the Port of Callao, Peru to the Port of San
10 Pedro, California. The cargo was transported under Bill of Lading Number 9000326264, a copy
11 of which is attached as EXHIBIT C to this Complaint. APL agreed to transport the cargo at a
12 temperature not to exceed + 2 degrees Celsius, with closed ventilation, 95% humidity, in a
13 refrigerated container, and in a controlled atmosphere.

14 23. Plaintiff, by and through its authorized representatives and agents, delivered the
15 cargo to APL in good order and condition. The cargo was loaded on to the vessel APL Balboa,
16 V032.

17 24. On or about November 14, 2006, the cargo arrived in San Pedro, California
18 aboard the vessel APL Turquoise V072. Upon arrival in San Pedro, California, Plaintiff
19 delivered the cargo to Yamko Truck Lines, who transported the cargo under Yamko Freight Bill
20 # 00145934, which is attached as EXHIBIT H to this Complaint. Upon information and belief,
21 the cargo was in good condition at the time it was delivered to Yamko. Yamko then delivered
22 the cargo to Plaintiff at Guadalupe, California on or about November 16, 2006. Yamko agreed
23 and undertook to transport the cargo in refrigerated containers and to deliver the cargo in good
24 order and condition.

1 25. Upon arrival at Guadalupe, Plaintiff determined that the cargo was badly damaged
2 and wholly unmarketable. The cargo did not arrive in good order and condition. On November
3 16, 2006, Plaintiff obtained an inspection of the cargo by a representative of the U.S. Department
4 of Agriculture, who confirmed the damage to the cargo. Plaintiff then gave timely and prompt
5 notification of the damage to the cargo to APL and provided APL with the opportunity to inspect
6 the damage. Plaintiff subsequently disposed of the entire shipment.
7

8 26. The shipping container for the cargo contained a temperature recorder, placed in
9 the container by Plaintiff and Plaintiff's agents prior to delivery of the cargo to APL. The
10 temperature recordings were obtained by Plaintiff soon after delivery of the cargo to Guadalupe,
11 California on November 16, 2006. The recordings reflect that, for extended periods of time,
12 while in the possession of APL and Yamko, the cargo was transported at a temperature
13 significantly above 2 degrees Celsius. The manner in which the cargo was handled by APL and
14 Yamko was the cause of the damage to the cargo.
15

16 27. On or about November 16, 2006 and for the period shortly thereafter the market
17 price for Snow Peas from Peru was between \$13.00 and \$16.00 per carton. During that period of
18 time, the market price for Sugar Snap Peas from Peru was approximately \$18.00 per carton.
19

20 28. As a result of the damage to the cargo shipped under APL Bill of Lading Number
21 900032620 and Yamko Freight Bill # 00145934, Plaintiff has suffered damages of
22 approximately \$61,248.00 dollars.

23 29. Plaintiff, and its agents, performed all conditions precedent required by Bill of
24 Lading Number 9000326264 and as required by Yamko Freight Bill # 00145934. Defendant
25 APL has refused Plaintiff's demands for payment for the cargo that was damaged.
26
27

SHIPMENT APL # 90032677 / Yamko # 00145923

30. On or about November 1, 2006, Plaintiff, as owner and consignee, by and through its authorized representatives and agents, delivered to APL certain cargo consisting of 3,520 boxes of peas. Specifically, Plaintiff delivered to APL 880 boxes of Snow Peas and 2,640 boxes of Sugar Daddy Peas (with respect to this shipment, "the cargo"). The cargo was delivered to APL in Lima, Peru for transportation from the Port of Callao, Peru to the Port of San Pedro, California. The cargo was transported under Bill of Lading Number 900032677, a copy of which is attached as EXHIBIT D to this Complaint. APL agreed to transport the cargo at a temperature not to exceed + 2 degrees Celsius, with closed ventilation, 95% humidity, in a refrigerated container, and in a controlled atmosphere.

31. Plaintiff, by and through its authorized representatives and agents, delivered the cargo to APL in good order and condition. The cargo was loaded on to the vessel APL Balboa, V032.

32. On or about November 14, 2006, the cargo arrived in San Pedro, California aboard the vessel APL Turquoise V072. Upon arrival in San Pedro, California, Plaintiff delivered the cargo to Yamko Truck Lines, who transported the cargo under Yamko Freight Bill # 00145923, which is attached as EXHIBIT I to this Complaint. Upon information and belief, the cargo was in good condition at the time it was delivered to Yamko. Yamko then delivered the cargo to Plaintiff at Guadalupe, California on or about November 16, 2006. Yamko agreed and undertook to transport the cargo in refrigerated containers and to deliver the cargo in good order and condition.

33. Upon arrival at Guadalupe, Plaintiff determined that the cargo was badly damaged and wholly unmarketable. The cargo did not arrive in good order and condition. On November 16, 2006, Plaintiff obtained an inspection of the cargo by a representative of the U.S. Department

1 of Agriculture, who confirmed the damage to the cargo. Plaintiff then gave timely and prompt
2 notification of the damage to the cargo to APL and provided APL with the opportunity to inspect
3 the damage. APL authorized Plaintiff to dispose of the entire shipment and Plaintiff disposed of
4 the product.

5
6 34. The shipping container for the cargo contained a temperature recorder, placed in
7 the container by Plaintiff and Plaintiff's agents prior to delivery of the cargo to APL. The
8 temperature recordings were obtained by Plaintiff upon delivery of the cargo to Guadalupe,
9 California on November 16, 2006. The recordings reflect that, for extended periods of time,
10 while in the possession of APL and Yamko, the cargo was transported at a temperature
11 significantly above 2 degrees Celsius. The manner in which the cargo was handled by APL and
12 Yamko was the cause of the damage to the cargo.

13
14 35. On or about November 16, 2006 and for the period shortly thereafter the market
15 price for Snow Peas from Peru was between \$13.00 and \$16.00 per carton. During that period of
16 time, the market price for Sugar Snap Peas from Peru was approximately \$18.00 per carton.

17 36. As a result of the damage to the cargo shipped under APL Bill of Lading Number
18 900032620 and Yamko Freight Bill # 00145923, Plaintiff has suffered damages of
19 approximately \$61,600.00 dollars.

20
21 37. Plaintiff, and its agents, performed all conditions precedent required by Bill of
22 Lading Number 900032677 and required by Yamko Freight Bill # 00145923. Defendant APL
23 has refused Plaintiff's Demands for payment for the cargo that was damaged.

24 **SHIPMENT APL # 900032678 / Yamko # 00146002**

25 38. On or about November 8, 2006, Plaintiff, as owner and consignee, by and through
26 its authorized representatives and agents, delivered to APL certain cargo consisting of 3,520
27 boxes of peas. Specifically, Plaintiff delivered to APL 704 boxes of Snow Peas and 2,816 boxes

1 of Sugar Daddy Peas (with respect to this shipment, "the cargo"). The cargo was delivered to
2 APL in Lima, Peru for transportation from the Port of Callao, Peru to the Port of San Pedro,
3 California. The cargo was transported under Bill of Lading Number 900032678, a copy of
4 which is attached as EXHIBIT E to this Complaint. APL agreed to transport the cargo at a
5 temperature not to exceed + 2 degrees Celsius, with closed ventilation, 95% humidity, in a
6 refrigerated container, and in a controlled atmosphere.

7
8 39. Plaintiff, by and through its authorized representatives and agents, delivered the
9 cargo to APL in good order and condition. The cargo was loaded on to the vessel APL
10 Mendoza, V034.

11 40. On or about November 21, 2006, the cargo arrived in San Pedro, California
12 aboard the vessel MOL Ingenuity, V021. Upon arrival in San Pedro, California, Plaintiff
13 delivered the cargo to Yamko Truck Lines, who transported the cargo under Yamko Freight Bill
14 # 00146002, a copy of which is attached as EXHIBIT J to this Complaint. Upon information and
15 belief, the cargo was delivered to Yamko in good condition. Yamko then transported the cargo
16 to Plaintiff at Guadalupe, California on or about November 24, 2006. Yamko agreed and
17 undertook to transport the cargo in refrigerated containers and to deliver the cargo in good order
18 and condition.

19
20 41. Upon arrival at Guadalupe, Plaintiff determined that the cargo was badly damaged
21 and wholly unmarketable. The cargo did not arrive in good order and condition. On November
22 27, 2006, Plaintiff obtained an inspection of the cargo by a representative of the U.S. Department
23 of Agriculture, who confirmed the damage to the cargo. Plaintiff then gave timely and prompt
24 notification of the damage to the cargo to APL and provided APL with the opportunity to inspect
25 the damage. APL authorized Plaintiff to dispose of the entire shipment and Plaintiff disposed of
26 the product.
27

1 42. The shipping container for the cargo contained a temperature recorder, placed in
2 the container by Plaintiff and Plaintiff's agents prior to delivery of the cargo to APL. The
3 temperature recordings were obtained by Plaintiff upon delivery of the cargo to Guadalupe,
4 California on November 24, 2006. The recordings reflect that, for extended periods of time,
5 while in the possession of APL and Yamko, the cargo was transported at a temperature
6 significantly above 2 degrees Celsius. The manner in which the cargo was handled by APL and
7 Yamko was the cause of the damage to the cargo.
8

9 43. On or about November 27, 2006 and for the period shortly thereafter the market
10 price for Snow Peas from Peru was between \$14.00 and \$15.00 per carton. During that period of
11 time, the market price for Sugar Snap Peas from Peru was approximately \$18.00 per carton.
12

13 44. As a result of the damage to the cargo shipped under APL Bill of Lading Number
14 9000326278 and Yamko Freight Bill # 00146002 Plaintiff has suffered damages of
15 approximately \$61,248.00 dollars.

16 45. Plaintiff, and its agents, performed all conditions precedent required by Bill of
17 Lading Number 900032678 and as required by Yamko Freight Bill # 00146002. Defendant APL
18 has refused Plaintiff's Demands for payment for the cargo that was damaged.
19

20 OTHER FACTS

21 46. Some or all of the cargo shipments referenced herein were examined, soon after
22 their receipt by Plaintiff, by an investigator retained by APL, Captain Arun K Jolly. Captain
23 Jolly informed Plaintiff that he believed the damage caused to the shipments was the result of
24 malfunctioning ethelene scrubbers on the vessels utilized by APL.

25 47. Plaintiff paid APL more than \$30,000.00 for the services provided by APL in
26 shipping the cargo identified in Bills of Lading Numbers: 90032620, 90032664, 90032627
27 90032677, and 900032678.

1 48. Plaintiff paid Yamko approximately \$5,150.00 for the services provided by
2 Yamko in shipping the cargo identified in Yamko Freight Bill #'s 00145922, 00145924,
3 00145934, 00145923 and 00146002.

4 49. As to Yamko Freight Bill #'s 00145922, 00145924, 00145934, 00145923 and
5 00146002, and each of them, Defendant Yamko was an inland common carrier for reward.
6

7 **FIRST CAUSE OF ACTION**

8 (Breach of Contract – Bill of Lading Against Defendant APL)

9 50. Plaintiff re-alleges and incorporates herein the allegations contained in
10 paragraphs 1- 49, above, as if as though they were set forth in full herein.

11 51. On or about November 2006, in Lima, Peru, Plaintiff delivered five (5) container
12 loads of peas to APL for shipment to the State of California.
13

14 52. Plaintiff and APL entered separate contracts with regard to each load, the terms
15 of which are set forth in Bills of Lading Numbers: 90032620, 90032664, 90032627 90032677,
16 and 900032678.

17 53. Defendant APL materially breached each of these contracts. APL breached the
18 contracts in numerous respects, including but not limited to the following particulars:

- 19 a. By failing to deliver the cargo in good order and condition.
20
21 b. By failing to make the holds, refrigeration and cooling chambers and other
22 parts of the ships in which the cargo was carried fit and safe for the reception,
23 carriage and preservation of the cargo.
24
25 c. By failing to maintain the proper and agreed upon temperature of the cargo.
26
27 d. By failing to maintain the proper operation of the ethelene scrubbers on the
vessels and/or containers at issue.

e. By failing to carefully load, handle, stow, carry, keep, care for and discharge the cargo at issue.

f. By failing to maintain the proper ventilation, humidity and atmospheric control of the cargo

54. As a result of APL's breach of the contracts, and each of them, Plaintiff's cargo, peas, suffered damages which made the cargo unmarketable.

55. As a result, Plaintiff suffered economic damages in excess of \$300,000.00, in an amount to be proven at trial.

56. Plaintiff has fully performed its obligations under each of the contracts/Bills of Lading.

SECOND CAUSE OF ACTION

(Negligence -Against Defendant APL)

57. Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1- 56, above, as if as though they were set forth in full herein.

58. On or about November 2006, in Lima, Peru, Plaintiff delivered five (5) container loads of peas to APL for shipment to the State of California.

59. Plaintiff and APL entered separate contracts with regard to each load, the terms of which are set forth in Bills of Lading Numbers: 90032620, 90032664, 90032627 90032677, and 900032678.

60. Defendant APL materially breached each of these contracts. APL breached the contracts in numerous respects, including but not limited to the following particulars:

a. By failing to deliver the cargo in good order and condition.

b. By failing to transport the cargo in trucks fit and safe for the reception, carriage and preservation of the cargo.

1 c. By failing to maintain the proper and agreed upon temperature of the
2 cargo.

3 d. By failing to carefully load, handle, stow, carry, keep, care for and
4 discharge the cargo at issue.

5 e. By failing to maintain the proper ventilation, humidity and atmospheric
6 control of the cargo.

7 f. By failing to take proper measures for preservation of perishable goods in
8 transit.

9 g. By failing to maintain the proper operation of the ethelene scrubbers on
10 the vessels and/or containers at issue.

11
12 61. As a result of APL's breach of the contracts, and each of them, Plaintiff's cargo,
13 peas, suffered damages which made the cargo unmarketable.
14

15 62. As a result, Plaintiff suffered economic damages in excess of \$300,000.00, in an
16 amount to be proven at trial.

17 63. Plaintiff has fully performed its obligations under each of the contracts/Bills of
18 Lading.

19 **THIRD CAUSE OF ACTION**

20 (Breach of Contract –Against Defendant Yamko)

21
22 64. Plaintiff re-alleges and incorporates herein the allegations contained in
23 paragraphs 1- 63, above, as if as though they were set forth in full herein.

24 65. On or about November 14, 2006 and November 21, 2006, in San Pedro,
25 California, Plaintiff delivered a total of five (5) container loads of peas to Yamko for shipment
26 to Guadalupe, California.
27

1 66. Plaintiff and Yamko entered separate contracts memorialized by Yamko Freight
2 Bill #'s 00145922, 00145924, 00145934, 00145923 and 00146002, with regard to each load of
3 peas.

4 67. Defendant Yamko materially breached each of these contracts. Yamko breached
5 the contracts in numerous respects, including but not limited to the following particulars:
6

- 7 a. By failing to deliver the cargo in good order and condition.
- 8 b. By failing to transport the cargo in trucks fit and safe for the reception,
9 carriage and preservation of the cargo.
- 10 c. By failing to maintain the proper and agreed upon temperature of the
11 cargo.
- 12 d. By failing to carefully load, handle, stow, carry, keep, care for and
13 discharge the cargo at issue.
- 14 e. By failing to maintain the proper ventilation, humidity and atmospheric
15 control of the cargo.
- 16 f. By failing to take proper measures for preservation of perishable goods in
17 transit.
- 18 g. By failing to exercise proper care and diligence to protect the cargo.

19 68. As a result of Yamko's breach of the contracts, and each of them, Plaintiff's
20 cargo, peas, suffered damages which made the cargo unmarketable.
21

22 69. As a result, Plaintiff suffered economic damages in excess of \$300,000.00, in an
23 amount to be proven at trial.
24

25 70. Plaintiff has fully performed its obligations under each of the contracts/Bills of
26 Lading.
27

FOURTH CAUSE OF ACTION

(Negligence – Defendant Yamko)

71. Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1- 70, above, as if as though they were set forth in full herein.

72. On or about November 14, 2006 and November 21, 2006 in San Pedro, California, Plaintiff delivered a total of five (5) container loads of peas to Yamko for shipment to Guadalupe, California. The loads were identified by Yamko Freight Bill #'s 00145922, 00145924, 00145934, 00145923 and 00146002.

73. Defendant Yamko negligently handled Plaintiff's container loads of peas, and each of them, in numerous respects, including but not limited to the following particulars:

- a. By failing to deliver the cargo in good order and condition.
- b. By failing to transport the cargo in trucks fit and safe for the reception, carriage and preservation of the cargo.
- c. By failing to maintain the proper and agreed upon temperature of the cargo.
- d. By failing to carefully load, handle, stow, carry, keep, care for and discharge the cargo at issue.
- e. By failing to maintain the proper ventilation, humidity and atmospheric control of the cargo.
- f. By failing to take proper measures for preservation of perishable goods in transit.
- g. By failing to exercise proper care and diligence to protect the cargo.

74. As a direct and proximate result of Yamko's negligence, Plaintiff's cargo, suffered damages which made the cargo unmarketable.

1 75. As a result, Plaintiff suffered economic damages in excess of \$300,000.00, in an
2 amount to be proven at trial.

3 **FIFTH CAUSE OF ACTION**

4 (Strict Liability – Defendant Yamko)

5 76. Plaintiff re-alleges and incorporates herein the allegations contained in
6 paragraphs 1- 75, above, as if as though they were set forth in full herein.

7 77. On or about November 14, 2006 and November 21, 2006 in San Pedro,
8 California, Plaintiff delivered a total of five (5) container loads of peas to Yamko for shipment
9 to Guadalupe, California. The loads were identified as Yamko Freight Bill #'s 00145922,
10 00145924, 00145934, 00145923 and 00146002. With regard to each of these shipments,
11 Yamko served as an inland common carrier for reward.
12

13 78. Upon information and belief, each shipment was delivered to Yamko in good
14 condition.
15

16 79. At the time each shipment was delivered to Plaintiff it was damaged and
17 unmarketable.

18 80. As a result, Plaintiff suffered economic damages in excess of \$300,000.00, in an
19 amount to be proven at trial.

20 WHEREFORE, Plaintiff prays for judgment, on each Cause of Action, as follows:

21 1. For compensatory damages, in an amount exceeding \$300,000.00; the precise
22 amount to be determined according to proof at trial.

23 2. For pre-judgment interest on an amount exceeding \$300,000.00 from and after
24 November 16, 2006, at the rate of 10 percent per annum.
25
26
27

3. For reasonable attorney fees and costs of suit herein incurred; and
4. For such other and further relief as the court may deem proper.

Dated: August 8, 2007

MANDELBAUM, SALSBURG,
GOLD, LAZRIS & DISCENZA, P.C.

By: 

Lance N. Olitt (LO 6193)

Attorneys for Plaintiff

MARTINES FRUITS & VEGETABLES

EXHIBIT A



BILL OF LADING

SHIPPER (Principal or Sales Office and full address)

ARDEAN PRODUCE S.A.C.
CALLE AYACUCHO # 335, MIRAFLORES
TEL. 4459845 FAX 2412613
RUC 20509896314

BOOKING NUMBER

900032620

SA NUMBER 1 OF 1
APL 900032620

EXPORT REFERENCE

O/S 33349

CONSIGNEE (Name and Full Address / Non-Merchandise Direct Consignment to Consignee)
(Where provided otherwise, a consignee "To Order" means To Order of Shipper)

MARTINEZ FRUIT & VEGETABLE
11749 LOS OSES VALLEY ROAD SAN LUIS
CA 93401
TEL. 805 549 8008
FAX 805 549 0457

FORWARDING AGENT (Reference, F.M.C. No.)

HANSA COMERCIAL S.A.

PORT AND COUNTRY OF ORIGIN OF GOODS

CALLAO, PERU

ALSO NOTIFY (Name and Full Address) DOMESTIC ROUTING
EXPORT INSTRUCTIONS PER TERMINAL/ONWARD ROUTING
FROM PORT OF DESTINATION

NOTIFY PARTY (Name and Full Address)

J & K FRESH LLC
5011 INGLEWOOD AVENUE, SUITE #200
INGLESWOOD CA, 90301-3600
PH: 310-419-8770 FAX: 310-419-8790
CONTACT: IRMA MEDINA

INTER-CARRIER (Name)

PLACE OF RECEIPT

CALLAO, PERU

EXPORT CARRIER (Name, Vessel & Flag)

PORT OF LOADING

APL EALBIA

032

USA CALLAO, PERU

PORT OF DISCHARGE

PLACE OF DELIVERY

SAN PEDRO, CA

SAN PEDRO, CA

COPY NOT NEGOTIABLE
COLLECT

Excess Collection Please refer to Clause 7 (b) on Reverse Side

PARTICULARS FURNISHED BY SHIPPER

Payment by T/B cheque must be made to the order of APL (U.S. Inc.)

MOBILE CONTAINER	NO OF PKGS	DESCRIPTION OF GOODS	WEIGHT	VOLUME
FCL/FCL CIRID 820015-6 SEAL: G41518	3520	FREIGHT COLLECT BOXES PEI LV05400.03.02 SLAC CY/CY 1X40 RF CONTAINER 04 PALLETS WITH 704 BOXES - SNOG PEAS 16 PALLET WITH 2016 BOXES- SUGAR DADDY TOTAL: 20 PALLETS WITH 3,520 BOXES TEMPERATURE : + 2 C VENTILATION : CLOSED HUMIDITY : 95 % CONTROLLED ATMOSPHERE FREIGHT COLLECT	16460.000KG 36288.045CBM	40.000M 7412.580CBM
***** NBR ***** SEAL ***** CIRID820015-6 G41518		T/S R40	MODE CY/ CY	QUANT/TY 3520BOXES

***** APL COPY *****
** NON-NEGOTIABLE **

INSTRUCTIONS

LIA

OCEAN FREIGHT PAYABLE

PREPAID FREIGHTS WEIGH/AUTHOR
OR FREIGHTS COLLECT TO CONNECTION

PREPAID U.S.

COLLECT U.S.

Local Currency

The carrier warrants that the goods are properly packed, loaded, stowed, secured, dunnaged, lashed, braced, secured, and secured in accordance with the applicable regulations and the carrier's instructions. The carrier is not responsible for any loss or damage to the goods or for any delay in delivery of the goods, except as may be caused by the carrier's negligence or the carrier's failure to properly secure, load, stow, secure, dunnage, lash, brace, secure, and secure the goods in accordance with the applicable regulations and the carrier's instructions. The carrier is not responsible for any loss or damage to the goods or for any delay in delivery of the goods, except as may be caused by the carrier's negligence or the carrier's failure to properly secure, load, stow, secure, dunnage, lash, brace, secure, and secure the goods in accordance with the applicable regulations and the carrier's instructions. THE CARRIER AMERICAN PRESIDENTIAL LINES, LTD.

ISS	ISS	Office	TOTAL PREPAID	TOTAL COLLECT
Vessel	Vessel			

FCC	00021307	00032640	00000000	00000000
FORWARDER		SHIPPER	CONSIGNEE	

APPLICABLE ONLY WHEN USED AS MULTI-MODAL BILL OF LADING

ED PORT	NO. PORT	DEST	NOTIFY	COG
LIA	SPO	SPO		

By
Authorized Signature
Date and NOV. 01 2007
Place and LIMA, PE
APL 900032620
BL NUMBER

401100 1/1

APL		AMENDED 0211 06	
NOTICE OF ARRIVAL AND FREIGHT CHARGES			
BILL OF LADING NO. APLU 900032620 Y/Y SLAC		ESTIMATED TIME OF ARRIVAL IN THIS 11/14/06	
CUSTOM ENTRY INFORMATION		SHIPPER (Principal or Seller) ANDEAN PRODUCE S.A.C. CALLE AYACUCHO # 335, MIRAFLORES RUC 20509896314	
GO DATE IS 15 DAYS FM VESSEL ARR FOR CAD & 15 DAYS FM ARR INLAND FOR INBOND		CONSIGNEE (C) (Non-Negotiable unless consigned to order) MARTINEZ FRUIT & VEGETABLE 11549 LOS OSOS VALLEY ROAD SAN LUIS FAX 805 549 0467	
ARRIVING VESSEL APL TURQUOISE, V072		NOTIFY PARTY (NP) / INTERMEDIATE CONSIGNEE J & K FRESH LLC 9911 INGLEWOOD AVENUE, SUITE #200 CONTACTO: IRMA MEDINA	
Vessel ETA 11/14/06		ALSO NOTIFY PARTY (ANP)	
ORIGIN LOAD VESSEL APL BALBOA, V032		VIA LAST FOREIGN PORT MANZANILLO INT T	
DATE EXPORTED 11/01/06		PORT OF ORIGIN CALLAO, PERU	
PORT OF DISCHARGE SAN PEDRO, CA US		FROM COUNTRY OF ORIGIN PERU	
ARRIVING LOCATION		DESTINATION SAN PEDRO, CA	
CALL APL CUSTOMER SERVICE AT (800) 999-7733 FOR ARRIVING LOCATION INFORMATION		LEAD MARKS FCL/FCL CRLU 820015-6 SEAL: G41518	
FOR CARGO AVAILABILITY		CONTAINER NUMBER(S) CRLU8200156 G41518	
FOR CARGO AVAILABILITY AND SHIPMENT STATUS, CALL EAGLELINK AT (800) 2EAGLE1 FOR APL CUSTOMER SERVICE, CALL (800) 999-7733		DESCRIPTION OF GOODS (Refer to Original BL for full description) 1X40 RF CONTAINER 04 PALLETS WITH 704 BOXES - SNOW PEAS	
SPECIAL INSTRUCTIONS		3520PCES 16460KG 40.000M3	
FREIGHT RATE QUOTE (SEE WEIGHTS AND/OR MEASUREMENTS / SUBJECT TO CORRECTIONS)		CHECKS ARE PAYABLE TO APL 116 Inverness Drive East, Suite 400, Englewood, CO 80112, Attn: Freight Cashier If you have questions, please contact Denver Customer Center 1-800-999-7733. Voice Mail for Fax number changes: (770) 395-8231	
1VA 4090.00/VAN			
ATM US\$ 1700.00/EA		PREPAID	
BAF US\$ 310.00/EA		COLLECT	
IFS US\$ 200.00/EA		4090.00	
CSC US\$ 100.00/EA		1700.00	
		310.00	
		200.00	
		100.00	
VESSEL VOYAGE 1B2 032 US\$		TOTALS→	
		6400.00	

On Store Door Delivery moves controlled by APL trucking, please notify your local APL office in writing of empty container availability (not the trucker) in order to stop per diem charges. Please contact APL Customer Service at 800-999-7733 for local email addresses.

IMPORTANT DELIVERY INSTRUCTIONS

Thank you for shipping with APL. This notice is given to APL importers and associates to expedite delivery. If original bills of lading were issued, we ask that you surrender one of the original bills, properly endorsed, to the following APL address closest to your geographical location: APL, LTD. 116 Inverness Dr. East Ste 400 Englewood, CO. 80112, APL, LTD. 100 Central Ave. Bldg 40C South Kearny, NJ 07032 or APL, LTD. 180 E. Ocean Blvd., Suite 800, Long Beach, CA 90802. To obtain the release of your goods, make payment of all outstanding freight and other charges due (demurrage, storage, fumigation, etc.). Please note cargo is subject to local Customs' jurisdiction and practice.

You are requested to arrange for the prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released. Demurrage rates and free time assessment can be provided by calling an APL Customer Service Representative at 800-999-7733. Please also refer to Clause 15 on the reverse side of the original Bill of Lading regarding the disposition of any undelivered goods.

CARRIER'S CERTIFICATE

The undersigned carrier bringing the within described merchandise to this port, hereby certifies that this copy or extract of the Bill of Lading is genuine and may be used for the purpose of making Customs entry as provided for the Tariff Act of 1930.

John W. Allen

John W. Allen
 Director, Customer Service, North America
 APL

overnite
 fedex
 ✓ # 2 1474

46400 -

EXHIBIT B



BOOKS RECEIVED

9005262)

APLJ 910052671

EXPORT REFERENCES

075 33245

FORWARDED TO AGITATION

PANSA COMERCIAL S.A.

POINT AND COUNTRY OF ORIGIN OF GOODS

CALLAO, PERU

ALSO NOTIFY (Name and Full Address) AKAWSA FC, ROUTED
EXON: INSTRUCTION/ITER TERMINAL/ONWARD ROUTE
FROM POINT OF DESTINATION

CONFIDENTIAL (Name and F.A. Address) [Redacted] U.S. Coast Guard (U.S.C.G.)
Further provided or written a confidential "In Case" means [Redacted]

MARTINEZ FRUIT & VEGETABLE
11549 LOS OSOS VALLEY ROAD SAN LUIS
CA. 93401
TEL. 805 549 8008
FAX 805 549 0467

NOTIFY PARTY IN THE FIELD (CLASSIFIED)

J & K FRESH LLC
9911 INGLEWOOD AVENUE, SUITE #200
INGLEWOOD CA 90301-3600
PH: 310-419-8770 FAX: 310-419-8790
CONTACT: IRMA MEDINA

INITIAL CARRIAGE NUMBER:

PLACE OF HEATH

EXAMINER'S NAME (Vessel name & No.)

CALLAO. PERU.

PORT OF LOANES

APL BALBOA US2 USA CALLAO, PERU

PLACE OF DELIVERY:

SAN PEDRO, LA

SAN PEDRO, CA

Excess Valuation: Please refer to Clause 7 (ii) on Reverse Side.

PARTICULARS FURNISHED BY SHIPPER

Payment by Cheque must be made to the order of AFL C/A. Pte 1

10-17-1 AF, COPY 725
72 BURR-NEAPOL LAFLE

[illegible]

*APPLICABLE ONLY WHEN USED AS MULTI-MODAL BILL OF LADING

2004-05-15 10:05

L, Inc.

Page: 003

APL

BILL OF LADING

: 032627

11/14/06 SVW

SHIPPER (Principal or Seller license and full address) ANDEAN PRODUCE S.A.C. CALLE AYACUCHO # 335, MIRAFLORES TEL. 4459845 FAX 2412613 RUC 20509896314		PAGE 2 OF 2	B/L NUMBER APLU 900032627																												
CONSIGNEE (Name and Full Address / Non-Negotiable / Unless Consigned to Order) (Unless provided otherwise, a consignment "To Order" means to Order of Shipper.) MARTINEZ FRUIT & VEGETABLE 11549 LOS OSOS VALLEY ROAD SAN LUIS CA. 93401 TEL. 805 549 8008 FAX 805 549 0467		EXPORT REFERENCES O/S 33345																													
NOTIFY PARTY/INTERMEDIATE CONSIGNEE (Name and Full Address) J & K FRESH LLC 9911 INGLEWOOD AVENUE, SUITE #200 INGLEWOOD CA, 90301-3600 PH: 310-419-8770 FAX: 310-419-8790 CONTACTO: IRMA MEDINA		FORWARDING AGENT (Reference, F.M.C. No.) RANSA COMERCIAL S.A.																													
INITIAL CARRIAGE (MODE)* EXPORT CARRIER (Vessel, voyage, & flag) APL BALBOA 032 USA PORT OF DISCHARGE SAN PEDRO, LA		POINT AND COUNTRY OF ORIGIN OF GOODS CALLAO, PERU																													
PLACE OF RECEIPT* CALLAO, PERU PORT OF LOADING SAN PEDRO, CA PLACE OF DELIVERY* SAN PEDRO, CA		ALSO NOTIFY (Name and Full Address)/DOMESTIC ROUTING/EXPORT INSTRUCTIONS/ PIER — TERMINAL/ONWARD ROUTING FROM POINT OF DESTINATION																													
<table border="1"> <thead> <tr> <th colspan="3">Bills of Lading Please refer to Clause 7 (H) on Reverse Side</th> <th colspan="2">PARTICULARS FURNISHED BY SHIPPER</th> <th colspan="2">Payment by Cheque must be made to the order of APL Co. Ltd.</th> </tr> <tr> <th>NKS & NOS./CONTAINER NOS.</th> <th>NO. OF PKGS.</th> <th>H.M.</th> <th>DESCRIPTION OF PACKAGES AND GOODS</th> <th>GROSS WEIGHT</th> <th colspan="2">MEASUREMENT</th> </tr> </thead> <tbody> <tr> <td>***CTR NBR***</td> <td>****SEAL NBR****</td> <td>T/S</td> <td>MODE</td> <td>QUANT/TYPER</td> <td colspan="2"></td> </tr> <tr> <td>APRU507520-4</td> <td>G41632</td> <td>R40</td> <td>CY/CY</td> <td>3520BOXS</td> <td colspan="2"></td> </tr> </tbody> </table>				Bills of Lading Please refer to Clause 7 (H) on Reverse Side			PARTICULARS FURNISHED BY SHIPPER		Payment by Cheque must be made to the order of APL Co. Ltd.		NKS & NOS./CONTAINER NOS.	NO. OF PKGS.	H.M.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT		***CTR NBR***	****SEAL NBR****	T/S	MODE	QUANT/TYPER			APRU507520-4	G41632	R40	CY/CY	3520BOXS		
Bills of Lading Please refer to Clause 7 (H) on Reverse Side			PARTICULARS FURNISHED BY SHIPPER		Payment by Cheque must be made to the order of APL Co. Ltd.																										
NKS & NOS./CONTAINER NOS.	NO. OF PKGS.	H.M.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT																										
CTR NBR	****SEAL NBR****	T/S	MODE	QUANT/TYPER																											
APRU507520-4	G41632	R40	CY/CY	3520BOXS																											

B/L TO BE RELEASED AT			OCEAN FREIGHT PAYABLE AT		
FREIGHT RATES CHARGES WEIGHTS AND/OR MEASUREMENTS (SUBJECT TO CORRECTION)			PREPAID U.S. \$	COLLECT U.S. \$	Local Currency
OCF	1VN	4090/VAN		4090.00	
ATM	US\$	1700/EA		1700.00	
BAF	US\$	310/EA		310.00	
IFS	US\$	200/EA		200.00	
CSC	US\$	100/EA		100.00	
CEX	US\$	120		120.00	

The undersigned Carrier hereby acknowledges receipt of the sealed container or packages or other shipping units said to contain the Goods described above in apparent external good order and condition unless otherwise stated. The Shipper agrees, and the Consignee and every person purchasing this instrument for value, if negotiable, or otherwise having an interest in the Goods is advised that the receipt, custody, carriage and delivery of the Goods are subject to all the terms and conditions set forth and by incorporated by reference on this side and the reverse hereof, whether written, stamped or printed.

Set of 0 originals of this bill of lading is hereby issued by the Carrier. Upon surrender to the Carrier of any one negotiable bill of lading, properly endorsed, all others shall stand void.

IBB 032	TOTAL PREPAID				
Vessel	Voyage	TOTAL COLLECT	SPD	6520.00	

BL number: APLU 900032627

Date: NOV. 01, 2006

Place Issued: LIMA, PE

American President Lines, Ltd., The Carrier
BILL OF LADING COMPLETE

THANK YOU FOR SHIPPING AMERICAN PRESIDENT LINES, LTD.

** Proof Read Copy **

APL

BILL OF LADING

: 032627
11/14/06 SVW

SHIPPER (Principal or Seller License and full address)

ANDEAN PRODUCE S.A.C.
CALLE AYACUCHO # 335, MIRAFLORES
TEL. 4459845 FAX 2412613
RUC 20509896314

PAGE

1 OF 2

B/L NUMBER

APLU 900032627

EXPORT REFERENCES
O/S 33345

CONSIGNEE (Name and Full Address /Non-Negotiable Unless Consigned to Order.)
(Unless provided otherwise, a consignment to Order means to Order of Shipper)

MARTINEZ FRUIT & VEGETABLE
11549 LOS OSOS VALLEY ROAD SAN LUIS
CA.93401
TEL. 805 549 8008
FAX 805 549 0467

FORWARDING AGENT (References F.M.C. No.)

RANSA COMERCIAL S.A.

POINT AND COUNTRY OF ORIGIN OF GOODS

CALLAO, PERU

NOTIFY PARTY/INTERMEDIATE CONSIGNEE (Name and Full Address)

J & K FRESH LLC
9911 INGLEWOOD AVENUE, SUITE #200
INGLEWOOD CA, 90301-3600
PH: 310-419-8770 FAX: 310-419-8790
CONTACTO: IRMA MEDINA

ALSO NOTIFY (Name and Full Address)/DOMESTIC ROUTING/EXPORT INSTRUCTIONS/
PIER - TERMINAL/ONWARD ROUTING FROM PORT OF DESTINATION

INITIAL CARRIAGE (MODE)

PLACE OF RECEIPT

CALLAO, PERU

EXPORT CARRIER (Vessel, voyage, & flag)

PORT OF LOADING

APL BALBOA 032 USA CALLAO, PERU

PORT OF DISCHARGE

PLACE OF DELIVERY

SAN PEDRO, LA SAN PEDRO, CA

Excess Valuation Please refer to Clause 7(ii) on Reverse Side

PARTICULARS FURNISHED BY SHIPPER

Payment by Cheque must be made to the order of APL Co. Pte Ltd

MKS. & NOS./CONTAINER NOS.

NO. OF PKGS.

FLM

DESCRIPTION OF PACKAGES AND GOODS

GROSS WEIGHT

MEASUREMENT

FCL/FCL

APRU 507520-4
SEAL: G41632

3520

BOXES

FREIGHT COLLECT

PE/LV05400.03.02

SLAC CY/CY 16840.000KG

40.000M3

1X40' RF CONTAINER

16 PALLETS WITH 2816 BOXES -

SUGAR DADDY

04 PALLETS WITH 704 BOXES- SNOW

PEAS

TOTAL: 20 PALLETS WITH 3,520
BOXES

TEMPERATURE : + 2 C

VENTILATION : CLOSED

HUMIDITY : 95 %

CONTROLLED ATMOSPHERE

FREIGHT COLLECT

CONTINUED ON FOLLOWING PAGE

B/L TO BE RELEASED AT LIMA, PE

FREIGHT RATES CHARGES, WEIGHTS AND/OR
MEASUREMENTS (SUBJECT TO CORRECTION)

OCEAN FREIGHT PAYABLE AT

SAN PEDRO, CA

PREPAID U.S. \$

COLLECT U.S. \$

Local Currency

The undersigned Carrier hereby acknowledges receipt of the sealed container or packages or other shipping units said to contain the Goods described above in apparent external good order and condition unless otherwise stated. The Shipper agrees, and the Consignee and every person purchasing this instrument for value, if negotiable, or otherwise having an interest in the Goods is advised that the receipt, custody, carriage and delivery of the Goods are subject to all the terms and conditions set forth and by incorporated by reference on this side and the reverse hereof, whether written, stamped or printed.

A set of 0 originals of this bill of lading is hereby issued by the Carrier. Upon surrender to the Carrier of any one negotiable bill of lading properly endorsed, all others shall stand void.

1BB 032

Vessel

Voyage

TOTAL PREPAID

TOTAL COLLECT

BL number: APLU 900032627

Date: NOV. 01, 2006

Place Issued: LIMA, PE


American President Lines, Ltd., The Carrier

BILL OF LADING COMPLETE

THANK YOU FOR SHIPPING AMERICAN PRESIDENT LINES, LTD.

** Proof Read Copy **

EXHIBIT C

 AMENDED 0211 06 NOTICE OF ARRIVAL AND FREIGHT CHARGES		SHIPPER (Principal or Seller) ANDEAN PRODUCE S.A.C. CALLE AYACUCHO # 335, MIRAFLORES RUC 20509896314																		
BILL OF LADING NO: APLU 900032664 Y/Y SLAC		11/14/06 ESTIMATED TIME OF ARRIVAL AT DEST																		
CUSTOM ENTRY INFORMATION GO DATE IS 15 DAYS FM VESSEL ARR FOR CAD & 15 DAYS FM ARR INLAND FOR INBOND		CONSIGNEE (C) (Non-Negotiable unless consigned to order) MARTINEZ FRUIT & VEGETABLE 11549 LOS OROS VALLEY ROAD SAN LUIS FAX 805 549 0467																		
NOTIFY PARTY (NP) / INTERMEDIATE CONSIGNEE J & K FRESH LLC 9911 INGLEWOOD AVENUE, SUITE #200 CONTACTO: IRMA MEDINA		ALSO NOTIFY PARTY (ANP)																		
ARRIVING VESSEL APL TORQUOISE, V072 Vessel ETA 11/14/06	FLAG U.S.A.	SERVICE TYPE LOC	VIA LAST FOREIGN PORT MANZANILLO INT T																	
ORIGIN LOAD VESSEL APL BALBOA, V032 DATE EXPORTED 11/01/06	PORT OF ORIGIN CALLAO, PERU	FROM COUNTRY OF ORIGIN PERU	DESTINATION SAN PEDRO, CA																	
PORT OF DISCHARGE SAN PEDRO, CA US	ARRIVING LOCATION CALL APL CUSTOMER SERVICE AT (800) 999-7733 FOR ARRIVING LOCATION INFORMATION																			
FOR CARGO AVAILABILITY FOR CARGO AVAILABILITY AND SHIPMENT STATUS, CALL EAGLELINK AT (800) 2EAGLE1 FOR APL CUSTOMER SERVICE, CALL (800) 999-7733	LEAD MARKS FCL/FCL APRU 509538-7 SEAL: 641914																			
SPECIAL INSTRUCTIONS		CONTAINER NUMBER(S) APERU5095387 641914																		
FREIGHT RATE CHARGES, WEIGHTS AND MEASUREMENTS (SUBJECT TO CORRECTION) <table border="1"> <tr> <td>ATM</td> <td>US\$</td> <td>1700.00/EA</td> </tr> <tr> <td>BAF</td> <td>US\$</td> <td>310.00/EA</td> </tr> <tr> <td>IFS</td> <td>US\$</td> <td>200.00/EA</td> </tr> <tr> <td>CSC</td> <td>US\$</td> <td>100.00/EA</td> </tr> </table>		ATM	US\$	1700.00/EA	BAF	US\$	310.00/EA	IFS	US\$	200.00/EA	CSC	US\$	100.00/EA	PREPAID	COLLECT <table border="1"> <tr> <td>4090.00</td> </tr> <tr> <td>1700.00</td> </tr> <tr> <td>310.00</td> </tr> <tr> <td>200.00</td> </tr> <tr> <td>100.00</td> </tr> </table>	4090.00	1700.00	310.00	200.00	100.00
ATM	US\$	1700.00/EA																		
BAF	US\$	310.00/EA																		
IFS	US\$	200.00/EA																		
CSC	US\$	100.00/EA																		
4090.00																				
1700.00																				
310.00																				
200.00																				
100.00																				
VESSEL VOYAGE 1B2 032 US\$		TOTALS →	6400.00																	
DESCRIPTION OF GOODS (Refer to Original BL for full description) 1X40' RF CONTAINER 16 PALLETS WITH 2464 BOXES SUGAR DADDY		3520PCES 17110KG 40.000M3																		
CHECKS ARE PAYABLE TO APL 116 Inverness Drive East, Suite 400, Englewood, CO 80112, Attn: Freight Cashier If you have questions, please contact Denver Customer Center 1-800-999-7733. Voice Mail for Fax number changes: (770) 395-8231																				

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IMPORTANT DELIVERY INSTRUCTIONS

Thank you for shipping with APL. This notice is given to APL Importers and associates to expedite delivery. If original bills of lading were issued, we ask that you surrender one of the original bills, properly endorsed, to the following APL address closest to your geographical location: APL, LTD. 116 Inverness Dr. East Ste 400 Englewood, CO. 80112, APL, LTD. 100 Central Ave. Bldg 40C South Kearny, NJ 07032 or APL, LTD. 180 E. Ocean Blvd., Suite 800, Long Beach, CA 90802. To obtain the release of your goods, make payment of all outstanding freight and other charges due (demurrage, storage, fumigation, etc.). Please note cargo is subject to local Customs' jurisdiction and practice.

You are requested to arrange for the prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released. Demurrage rates and free time assessment can be provided by calling an APL Customer Service Representative at 800-999-7733. Please also refer to Clause 15 on the reverse side of the original Bill of Lading regarding the disposition of any undelivered goods.

CARRIER'S CERTIFICATE

The undersigned carrier bringing the within described merchandise to this port, hereby certifies that this copy or extract of the Bill of Lading is genuine and may be used for the purpose of making Customs entry as provided for the Tariff Act of 1930.



John W. Allen
 Director, Customer Service, North America
 APL

overrite
 Feb 14/07
 21474
 #6400-

EXHIBIT D



BILL OF LADING

SHIPPER (Principal or Sales Office and full address)

ANDREAN PRODUCE S.A.C.
CALLE AYACUCHO # 335, MIRAFLORES
TEL. 4459845 FAX 2412613
RUC 20509896314

BOOKING NUMBER

900032677

PLATE PAGE 1 OF 1
APLU 900032677

EXPORT REFERENCES

O/S 33353

CONSIGNEE (Name and Full Address / Not Negotiable (If not requested to (Insert)
(If less provided otherwise a consignment To Order means To Order of Shipper)

MARTINEZ FRUIT & VEGETABLE
11549 LOS OSOS VALLEY ROAD
SAN LUIS CA 95401
TEL. 801-549-8008
FAX. 801-549-0467

FORWARDING AGENT (Reference: F.M.C. No.)

HANSA COMERCIAL S.A.

POINT AND COUNTRY OF ORIGIN OF GOODS

CALLAO, PERU

ALSO NOTIFY (Name and Full Address) DOMESTIC ROUTING
EXPORT INSTRUCTIONS/TERMINAL-ONWARD ROUTING
FROM POINT OF DESTINATION

NOTIFY PARTY (Name and Full Address)

J & K FRESH LLC
9911 INGLEWOOD AVENUE, SUITE #200
INGLEWOOD CA, 90301-3600
PH: 310-419-8770 FAX: 310-419-8790
CONTACTO: IRMA MEDINA

INITIAL CARRIAGE ORDER

PLACE OF RECEIPT

CALLAO, PERU

EXPORT CARRIER (Vessel, Voyage, & Flag)

POINT OF LOADING

APL CALBA

032

USA CALLAO, PERU

PORT OF DISCHARGE

PLACE OF DELIVERY

SAN PEDRO, CA

SAN PEDRO, CA

Access Validation Please refer to Clause 7 (b) on Reverse Side

PARTICULARS FURNISHED BY SHIPPER

Payment by Cheque must be made to the order of APL Co. Ltd

NO. OF PALLETS

NO. OF PALLETS

DESCRIPTION OF PACKAGES BY MODE

NO. OF PALLETS

WEIGHT

FCL/FCL
APRU 505549-2
SEAL: 641913

3520

FREIGHT COLLECT
BOXES PE LV05400.03.02 SLAC CY/CY
1X40 RF CONTAINER
05 PALLETS WITH 880 BOXES - SNOW
PEAS
15 PALLETS WITH 2640 BOXES- SUGAR
DADDY
TOTAL: 20 PALLETS WITH 3520 BOXES

17020.000KG
37572.637LB

40.000M
1412.580CB

TEMPERATURE : + 2 C
VENTILATION : CLOSED
HUMIDITY : 95 %
CONTROLLED ATMOSPHERE

FREIGHT COLLECT

***CTR NBR**
APRU505549-2

SEAL
641913

NBR*** T/S
R40

MODE
CY/ CY

QUANT/TYPE
3520BOXES

*** AP. COPY ***
** NON-NEGOTIABLE **

APL FORM 100000

LTA

OCEAN FREIGHT PAYABLE AT

THE UNIT RATE CHARGES WEIGHTS AND/OR
MEASUREMENTS SUBJECT TO CORRECTION

PREPAID US \$

COLLECT US \$

Local Currency

The undersigned hereby certifies that the above particulars are true and correct to the best of his knowledge and belief and that the goods are in conformity with the description and are in conformity with the weight and measurement stated herein. He further certifies that the goods are in conformity with the description and are in conformity with the weight and measurement stated herein. He further certifies that the goods are in conformity with the description and are in conformity with the weight and measurement stated herein.

AMERICAN PRESIDEN
LINES, LTD.

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00632640

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 NOTICE OF ARRIVAL AND FREIGHT CHARGES		AMENDED 0211 06																															
		SHIPPER (Principal or Seller) ANDEAN PRODUCE S.A.C. CALLE ATACUCHO # 335, MIRAFLORES RUC 20509896314																															
BILL OF LADING NO: APLU 900032677 Y/Y SLAC ESTIMATED TIME OF ARRIVAL: 11/14/06		CONSIGNEE (C) (Non-Negotiable unless consigned to order) MARTINEZ FRUIT & VEGETABLE 11549 LOS OSOS VALLEY ROAD FAX: 801-549-0467																															
CUSTOM ENTRY INFORMATION GO DATE IS 15 DAYS FM VESSEL ARR FOR CAD & 15 DAYS FM ARR INLAND FOR INBOND		NOTIFY PARTY (NP) / INTERMEDIATE CONSIGNEE J & K FRESH LLC 9911 INGLEWOOD AVENUE, SUITE #200 CONTACTO: IRMA MEDINA																															
ARRIVING VESSEL: APL TURQUOISE, V072 Vessel ETA: 11/14/06 ORIGIN LOAD VESSEL: APL BALBOA, V032 DATE EXPORTED: 11/01/06 PORT OF DISCHARGE: SAN PEDRO, CA US		FLAG: U.S.A. SERVICE TYPE: LOC VIALAST FOREIGN PORT: MANZANILLO INT T PORT OF ORIGIN: CALLAO, PERU FROM COUNTRY OF ORIGIN: PERU DESTINATION: SAN PEDRO, CA																															
ARRIVING LOCATION: CALL APL CUSTOMER SERVICE AT (800) 999-7733 FOR ARRIVING LOCATION INFORMATION		LEAD MARKS: FCL/FCL CONTAINER NUMBER(S): APRU5055492 G41913 APRU 505549-2 SEAL: G41913																															
FOR CARGO AVAILABILITY: FOR CARGO AVAILABILITY AND SHIPMENT STATUS, CALL EAGLELINK AT (800) 2EAGLE1 FOR APL CUSTOMER SERVICE, CALL (800) 999-7733		DESCRIPTION OF GOODS (Refer to Original BL for full description) 1X40' RF CONTAINER 05 PALLETS WITH 860 BOXES - SNOW PEAS 3520PCES 17020KG 40.000M3																															
SPECIAL INSTRUCTIONS:		CHECKS ARE PAYABLE TO APL 116 Inverness Drive East, Suite 400, Englewood, CO 80112, Attn: Freight Cashier If you have questions, please contact Denver Customer Center 1-800-999-7733. Voice Mail for Fax number changes: (770) 396-8291																															
FREIGHT RATE CHARGES, WEIGHTS AND DIMENSIONS (SUBJECT TO CORRECTIONS) <table border="1"> <tr> <td>ATM</td> <td>US\$</td> <td>1700.00/EA</td> <td>PREPAID</td> <td>COLLECT</td> <td>4090.00</td> </tr> <tr> <td>BAF</td> <td>US\$</td> <td>310.00/EA</td> <td></td> <td></td> <td>1700.00</td> </tr> <tr> <td>IFS</td> <td>US\$</td> <td>200.00/EA</td> <td></td> <td></td> <td>310.00</td> </tr> <tr> <td>CSC</td> <td>US\$</td> <td>100.00/EA</td> <td></td> <td></td> <td>200.00</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td>100.00</td> </tr> </table>		ATM	US\$	1700.00/EA	PREPAID	COLLECT	4090.00	BAF	US\$	310.00/EA			1700.00	IFS	US\$	200.00/EA			310.00	CSC	US\$	100.00/EA			200.00						100.00	TOTALS → 6400.00	
ATM	US\$	1700.00/EA	PREPAID	COLLECT	4090.00																												
BAF	US\$	310.00/EA			1700.00																												
IFS	US\$	200.00/EA			310.00																												
CSC	US\$	100.00/EA			200.00																												
					100.00																												
VESSEL VOYAGE: 1B2 032 US\$																																	

On Store Door Delivery moves controlled by APL trucking, please notify your local APL office in writing of empty container availability (not the trucker) in order to stop per diem charges. Please contact APL Customer Service at 800-999-7733 for local email addresses.

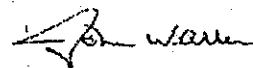
IMPORTANT DELIVERY INSTRUCTIONS

Thank you for shipping with APL. This notice is given to APL Importers and associates to expedite delivery. If original bills of lading were issued, we ask that you surrender one of the original bills, properly endorsed, to the following APL address closest to your geographical location. APL, LTD. 116 Inverness Dr. East Ste 400 Englewood, CO. 80112, APL, LTD. 100 Central Ave. Bldg 40C South Kearny, NJ 07032 or APL, LTD. 180 E. Ocean Blvd., Suite 800, Long Beach, CA 90802. To obtain the release of your goods, make payment of all outstanding freight and other charges due (demurrage, storage, fumigation, etc.). Please note cargo is subject to local Customs' jurisdiction and practice.

You are requested to arrange for the prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released. Demurrage rates and free time assessment can be provided by calling an APL Customer Service Representative at 800-999-7733. Please also refer to Clause 16 on the reverse side of the original Bill of Lading regarding the disposition of any undelivered goods.

CARRIER'S CERTIFICATE

The undersigned carrier bringing the within described merchandise to this port, hereby certifies that this copy or extract of the Bill of Lading is genuine and may be used for the purpose of making Customs entry as provided for the Tariff Act of 1930.



John W. Allen
 Director, Customer Service, North America
 APL

overnite
 Fed Ex

✓ 21474

964100 -

EXHIBIT E

APL

BILL OF LADING

ANDREW FRIDMAN & SONS
 1000 RIVERVIEW
 1000 RIVERVIEW
 TEL: 303.888.8312 FAX: 303.888.8312

SHIP TO: 303.888.8312

SHIP TO: 303.888.8312

MARKING: FRUIT & VEGETABLE
 1000 RIVERVIEW
 TEL: 303.888.8312 FAX: 303.888.8312

SHIP TO: 303.888.8312

SHIP TO: 303.888.8312

SHIP TO: 303.888.8312

1000 RIVERVIEW
 TEL: 303.888.8312 FAX: 303.888.8312

COPY 1 - COLLECT

SHIP TO: 303.888.8312

SHIP TO: 303.888.8312

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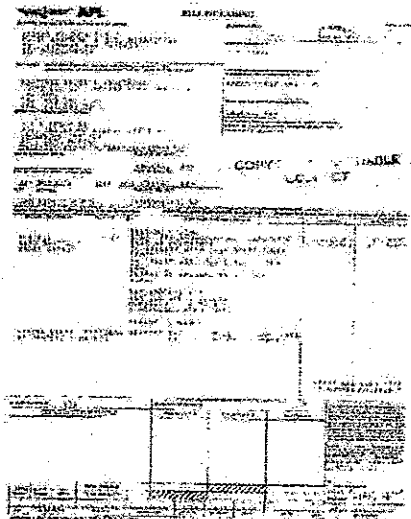
every Tuesday? Please have someone let me know what is happening.

Thank you,
Tracey

[Image Removed]

Check out the new AOL. Most comprehensive set of free safety and security tools, free access to millions of high-quality videos from across the web, free AOL Mail and more.

1 Attached Images



900032678.jpg
Save to AOL Pictures Shoebox | Download

NOV-17-2006 16:24

J&K FRESH

1 310 419 8787

P.001/001

Attn: Tracey - Just recv- We need docs. Thanks Emma 11/17/06 4:30pm

APL		NOTICE OF ARRIVAL AND FREIGHT CHARGES		SHIPPER (Principal or Owner) ARDEAN PRODUCE S.A.C. CALLE AYACUCHO # 335, MIRAFLORES RUC 20509896314
BILL OF LADING NO: APLU 900032678 Y/Y SLAC		DATE OF BILL: 11/24/06		CONSIGNEE (O) (Non-Negotiable unless designated to order) MARTINEZ FRUIT & VEGETABLE 11549 LOS OSOS VALLEY ROAD SAN LUIS FAX 805 549 0467
CUSTOMER ENTRY INFORMATION THIS CARGO TO BE CLEARED AT SAN PEDRO/CA MOL PRIOR TO MOVEMENT TO GUADALUPE, CA GO DATE IS 15 DAYS PM VESSEL ARR FOR CAD & 15 DAYS PM ARR INLAND FOR INBOND		NOTIFY PARTY (N/P) / INTERMEDIATE CONSIGNEE J & K FRESH LLC 9911 INGLEWOOD AVENUE SUITE 200 TELE: 310-419-8770 / FAX: 310-419-8790		ALSO NOTIFY PARTY (AN/P)
ARRIVING VESSEL BOUL LINCOLNITY, VOZL VESSEL ETA 11/21/06	FLAG U.S.A.	VESSEL TYPE REEFER	VIAL LAST FOREIGN PORT MANZANILLO INT T	
ORIGIN LOADING VESSEL APL MENDOZA, VO34	PART OF CARGO CALLAO, PERU	FROM COUNTRY OF ORIGIN PERU	DESTINATION GUADALUPE, CA	
DATE EXPORTED 11/08/06	PORT OF DISCHARGE SAN PEDRO/CA MOL US			
ARRIVING LOCATION		LEAD MARKS FCL/FCL		
FOR CARGO AVAILABILITY		CONTAINER NUMBER(S) APRU5070521 647607 SEAL: 647607		
SPECIAL INSTRUCTIONS		DESCRIPTION OF GOODS (Refer to Original B/L for full description) 1X40 RF CONTAINER 16 PALLETS WITH 2816 BOXES-SUGAR DADDY		
PAYMENT BY: 11/24/06		NO. OF PACKAGES 5520 PCS		
PREPAID		WEIGHT 17110 KGS		
COLLECT		MEASUREMENT 40.000 CBM		
ATM US\$ 1700.00/EA BAF US\$ 310.00/EA IFS US\$ 200.00/EA CSC US\$ 100.00/EA TMS US\$ 150.00/EA		CHECKS ARE PAYABLE TO APL 116 Inverness Drive East, Suite 400, Englewood, CO 80112, Attn: Freight Cashier If you have questions, please contact Denver Customer Center 1-800-999-7733, Voice Mail for Fax number changes: (770) 306-8231		
TOTALS: 7100.00				

On Store Door/Delivery moves controlled by APL trucking, please notify your local APL office in writing of empty container availability (not the trucker) in order to stop per diem charges. Please contact APL Customer Service at 800-999-7733 for local email addresses.

IMPORTANT DELIVERY INSTRUCTIONS

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You are requested to arrange for the prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released. Demurrage rates and free time assessment can be provided by calling an APL Customer Service Representative at 800-999-7733. Please also refer to Clause 15 on the reverse side of the original Bill of Lading regarding the disposition of any undelivered goods.

CARRIER'S CERTIFICATE

The undersigned carrier bringing the within described merchandise to this port, hereby certifies that this copy or extract of the Bill of Lading is genuine and may be used for the purpose of making Customs entry as provided for the Tariff Act of 1930.

John W. Allen


John W. Allen
Director, Customer Service, North America
APL

NOV-17-2006 16:16

91X

P.001

TOTAL P.001

 NOTICE OF ARRIVAL AND FREIGHT CHARGES		SHIPPER (Principal or Seller) ANDEAN PRODUCE S.A.C. CALLE AYACUCHO # 335, MIRAFLORES RUC 20509896314																													
BILL OF LADING NO APLU 900032678 Y/Y SLAC ESTIMATED TIME OF ARRIVAL AT DEST 11/24/06		CONSIGNEE (O) (Non-Negotiable unless consigned to order) MARTINEZ FRUIT & VEGETABLE 11549 LOS OSOS VALLEY ROAD SAN LUIS FAX 805 549 0467																													
CUSTOM ENTRY INFORMATION THIS CARGO TO BE CLEARED AT SAN PEDRO/CA MOL PRIOR TO MOVEMENT TO GUADALUPE, CA GO DATE IS 15 DAYS FM VESSEL ARR FOR CAD & 15 DAYS FM ARR INLAND FOR INBOND		NOTIFY PARTY (NP) / INTERMEDIATE CONSIGNEE J & K FRESH LLC 9911 INGLEWOOD AVENUE SUITE 200 TELF: 310-419-8770/FAX: 310-419-8790																													
ARRIVING VESSEL MOL INGENUITY, V0211 FLAG U.S.A. SERVICE TYPE MTR Vessel ETA 11/21/06 VIA LAST FOREIGN PORT MANZANILLO INT T ORIGIN LOAD VESSEL APL MENDOZA, V034 PORT OF ORIGIN CALLAO, PERU DATE EXPORTED 11/08/06 FROM COUNTRY OF ORIGIN PERU PORT OF DISCHARGE SAN PEDRO/CA MOL US DESTINATION GUADALUPE, CA		ALSO NOTIFY PARTY (ANP)																													
ARRIVING LOCATION		LEAD MARKS FCL/FCL CONTAINER NUMBER(S) APRU5070521 G47607 APRU 507052-1 SEAL: G47607																													
FOR CARGO AVAILABILITY		DESCRIPTION OF GOODS (Refer to Original BL for full description) 1X40 RF CONTAINER-- 16 PALLETS WITH 2816 BOXES-SUGAR DADDY																													
SPECIAL INSTRUCTIONS		NO. OF PACKAGES 3520PCES WEIGHT 17110KG MEASUREMENT 40.000M3																													
FREIGHT RATE CHARGES, WEIGHTS AND/OR MEASUREMENTS (SUBJECT TO CORRECTION) <table border="1"> <tr> <td></td> <td>IVA 4640.00/VAN</td> <td></td> <td></td> </tr> <tr> <td>ATM</td> <td>US\$ 1700.00/EA</td> <td>PREPAID</td> <td>COLLECT 4640.00</td> </tr> <tr> <td>BAF</td> <td>US\$ 310.00/EA</td> <td></td> <td>1700.00</td> </tr> <tr> <td>IFS</td> <td>US\$ 200.00/EA</td> <td></td> <td>310.00</td> </tr> <tr> <td>CSC</td> <td>US\$ 100.00/EA</td> <td></td> <td>200.00</td> </tr> <tr> <td>IMS</td> <td>US\$ 150.00/EA</td> <td></td> <td>100.00</td> </tr> <tr> <td></td> <td></td> <td></td> <td>150.00</td> </tr> </table>			IVA 4640.00/VAN			ATM	US\$ 1700.00/EA	PREPAID	COLLECT 4640.00	BAF	US\$ 310.00/EA		1700.00	IFS	US\$ 200.00/EA		310.00	CSC	US\$ 100.00/EA		200.00	IMS	US\$ 150.00/EA		100.00				150.00	CHECKS ARE PAYABLE TO APL 116 Inverness Drive East, Suite 400, Englewood, CO 80112, Attn: Freight Cashier If you have questions, please contact Denver Customer Center 1-800-899-7733. Voice Mail for Fax number changes: (770) 395-8234	
	IVA 4640.00/VAN																														
ATM	US\$ 1700.00/EA	PREPAID	COLLECT 4640.00																												
BAF	US\$ 310.00/EA		1700.00																												
IFS	US\$ 200.00/EA		310.00																												
CSC	US\$ 100.00/EA		200.00																												
IMS	US\$ 150.00/EA		100.00																												
			150.00																												
VESSEL VOYAGE 1M4 034 US\$		TOTALS 7100.00																													

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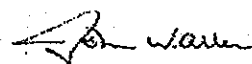
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CARRIER'S CERTIFICATE

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John W. Allen
Director, Customer Service, North America
APL

✓ 100027

EXHIBIT F

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/259-1229

FREIGHT BILL No. 00145922
DATE 11-28-06

CONSIGNEE

MARTINES 40815PO STREET COOLER
151 OBISPO ST.
GUADALUPE, CA 93434

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER JK1067721		AGENT APL TURBOISE		CHARGE VESSEL	B/L NUMBER 2677	
NO. PKGS.	DESCRIPTION & MARKS			WEIGHT	RATE	CHARGES
1	CONT: 3520 PCS: S. SNAPS&SNOW PEAS CRLU 8200156			37523	800.00	800.00
	PLUG IN					50.00
	18% FUEL SURCHARGE					144.00
	TOTAL					994.00
DELIVERED BY				DATE		RECEIVED BY CONSIGNEE
						X
BILL TO: MARTINES FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403						

ORIGINAL

Truck From LA. to Obispo

EXHIBIT G

200 11:36

3435554

OBISPO ST COOLING

PAGE 05

I.C.C. M.C. 121221

FREIGHT BILL No.

00145924

DATE

11-15-06

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/259-1229

MARTINEZ MORGISPO STREET COOLER
151 OBISPO ST.
GUADALUPE, CA 93434

MARTINEZ FRUITS & VEGETABLES
APL/DETH 302
TERMINAL ISLAND, CA

COLLECT

INCIDENT BROKER APL AGENT CHARGE VESSEL B/L NUMBER

NO. PKGS.	DESCRIPTION & MARKS	WEIGHT	RATE	CHARGES
1	CONTN. 3520 PCS. E. SNAP & SNOW PEAS APRU 5055492 SAL # 641913 0155529 APL 00031865 TIME IN 11:00 Road # 2	37523 2640 880	1 26680 SNO. 26679	15 X 176 5 X 176
DELIVERED BY	DATE	RECEIVED BY/CONSIGNEE	MARTINEZ FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403	
<i>[Signature]</i>	11/16/06	X <i>[Signature]</i> Driver to bank (Luis)		

DELIVERY RECEIPT

6925 Cherry Ave., Long Beach

YAMKOTRUCK LINES
90805-1720 562/259-1229FREIGHT BILL No.
DATE00145924
11-28-06

CONSIGNEE

MARTINES OBISPO STREET COOLER
151 OBISPO ST.
GUADALUPE, CA 93434

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER
JK1067718AGENT
APL TURQUOISECHARGE
VESSELB/L NUMBER
2677

NO. PKGS.	DESCRIPTION & MARKS	WEIGHT	RATE	CHARGES
1	CONT: 3520 PCS: S. SNAPS&SNOW PEAS APRU 5055492	37523	800.00	800.00
	AFTER HOURS PICK UP			65.00
	PLUS IN			50.00
	18% FUEL SURCHARGE			144.00
	TOTAL			1059.00
BILL TO: MARTINES FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403				
DELIVERED BY	DATE	RECEIVED BY CONSIGNEE		
		X		

ORIGINAL

EXHIBIT H

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/259-1229

FREIGHT BILL No. DATE

2007 1002
11 20 07

SHIPPING
RECEIPT

MARTINEZ FRUITS & VEGETABLES
10000 OBISPO STREET COOLER
100 OBISPO ST.
SAN LUIS OBISPO, CA 93404

SHIPPER

MARTINEZ FRUITS & VEGETABLES
ADL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER J. J. 713		AGENT OPL TURKEY		CHARGE VESSEL	B/L NUMBER 2627
NO. PKGS.	DESCRIPTION & MARKS			WEIGHT	RATE
1	FRUIT 35.00 PCS. 5 SNOWSNOW P-105 ADL 0673204			37126	800.00
	EXAM CHARGE TO FOL				200.00
	PLUS IN				100.00
	104 FUEL SURCHARGE				37.00
	EXAM/FOL TRACKER#3957				144.00
	TOTAL				1004.00
DELIVERED BY				DATE	RECEIVED BY CONSIGNEE
					X
BILL TO: MARTINEZ FRUIT & VEGETABLES P.O. BOX 1300 SAN LUIS OBISPO, CA 93404					

ORIGINAL

2006 08:20 3435954

OBISPO ST COOLING

PAGE 01

V.C.C. M.C. 121221

YAMKO TRUCK LINES

6025 Chevy Ave., Long Beach, CA 90805-1720 562/259-1229

FREIGHT BILL No. 00145934
DATE 11-15-06MARTINES MOSISPO STREET COOLER
151 OBISPO ST.
GUADALUPE, CA 93434MARTINEZ FRUITS & VEGETABLES
APL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER		AGENT		CHARGE		VESSEL		BILL NUMBER	
JK1067713		APL TURDOISE						2627	
NO. PKGS.	DESCRIPTION & MARKS					WEIGHT	RATE	CHARGES	
1	CONF: 3520 PCS: S SNAFS&SNOW PEAS APRU 5075204 EXAM:FCL <i>TEMPS 46°</i> <i>41° TO 43°</i> <i>AVG B.C. OBISPO ST.</i> <i>COOLING</i>					37126			
						704	SNO	4176 INKA SUN	
						2464	SNAP	INKA SUN	
						2816		14 x 176	
DELIVERED BY <i>Jon Jay Law</i>						DATE <i>1/1</i>		RECEIVED BY CONSIGNEE <i>X B. L. Co</i>	
						BILL TO: MARTINES FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403			

DELIVERY RECEIPT

EXHIBIT I

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/259-1229

FREIGHT BILL No. 00145923
DATE 11-28-06

CONSIGNEE

MARTINES ROSISPO STREET COOLER
151 OBISPO ST.
DURDALUPE, CA 93434

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER		AGENT		CHARGE		VESSEL		B/L NUMBER	
JK1067720		APL TURQUOISE						2677	
NO. PKGS.	DESCRIPTION & MARKS				WEIGHT	RATE	CHARGES		
1	CONT: 3520 PCS: S. SNAPS&SNOW PEAS APRU 5095387				37523	800.00	800.00		
					AFTER HOURS PICK UP		65.00		
					PLUS IN		50.00		
					18% FUEL SURCHARGE		144.00		
					T O T A L		1059.00		
DELIVERED BY					DATE		RECEIVED BY CONSIGNEE		
							X		
					BILL TO: MARTINES FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403				

ORIGINAL

OBISPO ST COOLING

PAGE 01

I.C.C. M.C. 121221

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/259-1229

FREIGHT BILL No.

00145923

DATE

11-15-06

REND-SNOC

MARTINES XOSISPO STREET COOLER
151 OBISPO ST.
GUADALUPE, CA 93434

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/BERTH 302
TERMINAL ISLAND, CA

COLLECT

BROKER		AGENT		CHARGE	COLLECT	
JK1267720		APL TURBOISE		VESSEL	B/L NUMBER 2677	
NO. PKGS.	DESCRIPTION & MARKS				WEIGHT	RATE
1	CONT: 3520 PCS: S. SNAPS&SNOW PEAS APRU 5095387				37523	
520676-1056 - Snaps 6 X 176 - Inka San 2464 - Snaps 14 X 176 - Inka San Road #1				8 p/b - Inka San 2657	6 p/b - G.P. Pirua	
DELIVERED BY				DATE	RECEIVED BY CONSIGNEE	
H.A. HONCABAL				11/16/06	X [Signature]	
BILL TO:				MARTINEZ FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403		

DELIVERY RECEIPT

EXHIBIT J

YAMKO TRUCK LINES

6925 Cherry Ave., Long Bea

A 90805-1720 562/259-1229

FREIGHT BILL No.
DATE00146002
12-04-06

CONSIGNEE

MARTINEZ MODISPO STREET COOLER
151 OBISPO ST.
MARCALUPE, CA 93404

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/BERTH 135
WILMINGTON, CA

COLLECT

BROKER JIN 067734		AGENT MDL INDENLITY		CHARGE VESSEL		B/L NUMBER 2678	
NO. PKGS.	DESCRIPTION & MARKS			WEIGHT	RATE	CHARGES	
1	CONT: 3520 PCS: G. SNAPS&SNOW PEAS APR. 0670521			37721	800.00	800.00	
	18% FUEL SURCHARGE					144.00	
	TOTAL					944.00	
DELIVERED BY				DATE		RECEIVED BY CONSIGNEE	
						X	
BILL TO: MARTINEZ FRUIT & VEGETABLE P.O. BOX 3308 SAN LUIS OBISPO, CA 93403							

ORIGINAL

DELIVERY RECEIPT

7/2006 11:03 3435954

OBISPO ST COOLING

PAGE 01

I.C.C. M.C. 121227

YAMKO TRUCK LINES

6925 Cherry Ave., Long Beach, CA 90805-1720 562/269-1229

FREIGHT BILL No.

00146002

DATE

11-22-06

CONSIGNEE

MARTINES 405150 STREET COOLER
151 OBISPO ST.
SAN LUIS OBISPO, CA 93403

SHIPPER

MARTINEZ FRUITS & VEGETABLES
APL/DETH 136
WILMINGTON, CA

COLLECT

BROKER JK1067914 AGENT MOL INGENUITY CHARGE VESSEL B/L NUMBER 2670

NO. PAGES	DESCRIPTION & MARKS	WEIGHT	RATE	CHARGES
1	CONT: 3000 PCS: S. SNAPS&SNOW KEAS APRU 5070521 1:00 PM 11-24-06 TEMPS: 40° 38° TO AVG 39° B.C. 013500 45	37721	4 x 176 = 704 16 x 176 = 2816	
DELIVERED BY: <i>En Day</i>	DATE: <i>11/29/06</i>	RECEIVED BY CONSIGNEE: <i>X</i>	BILL TO: MARTINES FRUIT & VEGETABLE P.O. BOX 3300 SAN LUIS OBISPO, CA 93403	

CONSIGNEE PLEASE NOTE: 1. Defect or Towed container (while at delivery address) will be at Consignee's Expense. 2. To avoid additional charges, container must be clean and clear of trash at time of pick up. 3. Detention Charges begin after 5th day (including the pick up day from the harbor). Container must be empty and Yamko notified 24 hours prior to pick up for consignee in no relief of any detention charges. Consignee takes sole responsibility for payment.

EXHIBIT K



Print

Close

Bill of Lading Terms and Conditions

1. DEFINITIONS

- i. "Carrier" includes APL Co. Pte Ltd, American President Lines, Ltd, the Vessel, its owner, operator, charterer (whether demise, time, voyage, space or slot), the master, and any connecting or substitute water carrier.
- ii. "Merchant" includes the Shipper, Consignee, Receiver, Holder of the Bill of Lading, Owner of the cargo or Person entitled to the possession of the cargo or having a present or future interest in the Goods and the servants and agents of any of these, all of whom shall be jointly and severally liable to the Carrier for the payment of all Freight, and for the performance of the obligations of any of them under this Bill of Lading.
- iii. "Person" means any natural person, company, firm, body corporate of unincorporated association or body, including any Government or governmental or statutory instrumentality or port authority.
- iv. "Sub-Contractor" includes owners and operators of vessels (other than the Carrier), stevedores, terminal and groupage operators, road and rail transport operators, longshoremen, warehousemen and any independent contractor employed by the Carrier in performance of the Carriage.
- v. "Indemnify" includes defend, indemnify and hold harmless.
- vi. "Goods" means the cargo received from the Merchant and includes any equipment or Container not supplied by or on behalf of the Carrier.
- vii. An endorsement on this Bill of Lading that the Goods have been shipped "on board" means on board the Carrier's Vessel, or another mode of transport operated by or on behalf of Carrier en route to the Port of Loading for loading aboard Carrier's Vessel.
- viii. "Container" includes any open or closed container, van, trailer, flatbed, transportable tank, flat, pallet, skid, platform or any similar article used to consolidate Goods and any equipment associated or attached thereto.
- ix. "Carriage" means the whole or any part of the operations and services undertaken by the Carrier in respect of the Goods covered by this Bill of Lading.
- x. "Combined Transport" arises if the Place of Receipt and/or the Place of Delivery are indicated on the face hereof in the relevant spaces.
- xi. "Port to Port Shipment" arises if the Carriage called for by this Bill of Lading is not Combined Transport.
- xii. "Vessel" includes the vessel named on the face of this Bill of Lading and any other vessel, lighter or watercraft owned, operated, chartered or employed by the Carrier or any connecting or substituted water carrier performing Carriage under this Bill of Lading.
- xlii. "Freight" includes all charges payable to the Carrier in accordance with the Applicable Tariff and this Bill of Lading.

2. CARRIER'S APPLICABLE TARIFF

The terms of the Carrier's Applicable Tariff are incorporated herein. Particular attention is drawn to the terms therein relating to Container and Vehicle demurrage. Copies of the relevant provisions of the Applicable Tariff are obtainable from the Carrier or its agents upon request. In case of inconsistency between this Bill of Lading and the Applicable Tariff, this Bill of Lading shall prevail.

3. WARRANTY

The Merchant warrants that in agreeing to the Terms and Conditions hereof, including the Applicable Tariff(s), it is, or has the authority of, the Person owning or entitled to the possession of the Goods and/or Container and this Bill of Lading, and that all prior agreements and Freight arrangements are merged in and superseded by the provisions of this Bill of Lading.

4. SUB CONTRACTING

- i. The Carrier shall be entitled to sub-contract on any terms the whole or any part of the Carriage, loading, unloading, storing, warehousing, handling and any and all duties whatsoever undertaken by the Carrier in relation to the Goods.
- ii. The Merchant undertakes that no claim or allegation shall be made against any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (including any independent contractors and any Sub-Contractors of the Carrier and their servants or agents), other than the Carrier which imposes or attempts to impose upon any such Person, or any Vessel owned by any such Person, any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not

arising out of negligence on the part of such Person and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such Person shall have the benefit of every right, defence, limitation and liberty of whatsoever nature herein contained or otherwise available to the Carrier as if such provisions were expressly for its benefit; and in entering into this contract, the Carrier, to the extent of these provisions, does so not only on its own behalf but also as agent and trustee for such Persons.

- iii. The Merchant further undertakes that no claim or allegation in respect of the Goods shall be made against the Carrier by any Person other than in accordance with the terms and conditions of this Bill of Lading which imposes or attempts to impose upon the Carrier any liability whatsoever in connection with the Goods or the Carriage of the Goods, whether or not arising out of negligence on the part of the Carrier and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences thereof.

5. CARRIER'S RESPONSIBILITY

A. PORT-TO-PORT SHIPMENT

If the Carriage called for by this Bill of Lading is a Port-to-Port Shipment, the Carrier's liability, if any, shall be restricted to the period when the Goods are loaded on board the Vessel until discharged therefrom or transhipped to another Vessel tackle-to-tackle, to be determined in accordance with the provisions of Clause 6 hereof.

B. COMBINED TRANSPORT

- i. If the Carriage called for by this Bill of Lading is a Combined Transport Shipment, the Carrier undertakes to perform and/or procure in its own name, performance of the Carriage from the Place of Receipt or the Port of Loading to the Port of Discharge or the Place of Delivery, whichever is applicable, and the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.
- ii. During the period prior to loading onto the Vessel and after discharge from the Vessel, the Carrier shall be entitled as against the Merchant to all rights, defences, immunities, exemptions, limitations of or exonerations from liability, liberties and benefits contained or incorporated in the contract between the Carrier and any Person whomsoever by whom the Carriage is procured, performed or undertaken, whether directly or indirectly (and including such Persons mentioned in Clause 4 ii) hereof) and who would have been liable to the Merchant if the Merchant had contracted directly with such Person or contained in any compulsory legislation applicable to such Person. However, in no event shall the Carrier's liability exceed that determined in accordance with the provisions of Clause 6 hereof.
- iii. If it cannot be proven where or when or at what stage of the Carriage the Goods or Containers or other packages were lost or damaged, it shall be conclusively deemed to have occurred whilst at sea and the Carrier's liability, if any, shall be determined in accordance with the provisions of Clause 6 hereof.

C. GENERAL PROVISIONS (APPLICABLE TO BOTH PORT-TO-PORT AND COMBINED TRANSPORT SHIPMENTS)

- i. The Carrier does not undertake that the Goods or Containers or other packages shall arrive at the Port of Discharge or Place of Delivery at any particular time or to meet any particular market or use, and the Carrier shall in no circumstances be liable for any direct, indirect or consequential loss or damage caused by delay or any other cause.
- ii. The terms of this Bill of Lading shall govern all responsibilities of the Carrier in connection with or arising out of the supply of a Container to the Merchant whether before or after the Goods are received by the Carrier for transportation or delivered to the Merchant.
- iii. When a Container is supplied by the Merchant, the Merchant enters into this Bill of Lading contract for itself and as agent of the owner or lessee (if other than the Merchant) of the Container, and the owner or lessee, as the case may be, is bound by the Terms and Conditions of this Bill of Lading as a result.
- iv. The rights, defences, immunities, exemptions, limitations of and exonerations from liability, liberties and benefits shall apply in any action or proceeding whatsoever brought against the Carrier and/or any Person encompassed in Clause 4 ii) hereof, whether in contract, tort, equity or other theory of recovery.

6. PARAMOUNT CLAUSE

- i. From loading of the Goods onto the Vessel until discharge of the Goods from the Vessel, the Carrier's responsibility shall be subject to the provisions of any legislation compulsorily applicable to this Bill of Lading:
 - a. which gives effect to the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, dated at Brussels, August 25, 1924, ("the Hague Rules") including adaptations thereof, such as the Carriage of Goods by Sea Act of the United States, 1936 ("US COGSA"), the provisions of which shall apply on all shipments to or from the United States

- whether compulsorily applicable or not, or
- b. which gives effect to said Rules as amended by the Protocols to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, dated at Brussels, February 23, 1968 (the "Hague-Visby Rules") and December 21, 1979 (the "SDR Protocol"), but where the Hague-Visby Rules or SDR Protocol are not compulsorily applicable, they shall not be given effect. Where the Hague Rules, adaptations thereof or the Hague-Visby Rules and SDR Protocol are not compulsorily applicable, except as to shipments to or from the United States, as provided in Clause 6 i) a), this Bill of Lading shall be governed by the Hague Rules, except that the limitation shall be US\$500 per package or per shipping unit as stated in Clause 7, and without prejudice to the Carrier's right to rely upon the Terms and Conditions of this Bill of Lading, notwithstanding the fact that they may confer wider or more beneficial rights, defences, immunities, exemptions, limitations, exonerations, liberties or benefits upon the Carrier and third-party beneficiaries than those afforded by the aforesaid conventions or legislation.
- ii. The applicable conventions or legislation shall apply to the Carriage by Inland waterways and reference to Carriage by sea in such conventions or legislation shall be deemed to include inland waterways.
- iii. The Carrier, notwithstanding which convention or legislation is applicable, shall be entitled to the benefit of Sections 4281 through 4287 of the Revised Statutes of the United States and amendments thereto, as if the same were expressly set out herein, including but not limited to the Fire Statute.
- iv. Prior to loading onto the Vessel and after discharge from the Vessel or if the stage of Carriage during which the loss or damage to Goods occurred cannot be proved, the Carrier's liability shall be governed under the Hague Rules, except that the limitation shall be US\$500 per package or per shipping unit as stated in Clause 7, and for this purpose the Hague Rules shall be extended to the periods before loading and subsequent to discharge and to the entire period of the Carrier's responsibility. Notwithstanding Clause 6 iv), if the provisions of any contract between Carrier and any contractor or the provisions of any international convention or national law applicable to any such mode of Carriage employed at the time of such loss, damage, misdelivery, conversion or delay would result in liability to the modal carrier, and such liability is less than Carrier's liability determined in Clause 6 iv), then Carrier's liability shall not exceed such lesser amount.
- v. It is hereby agreed by the Merchant that the Carrier qualifies and shall be regarded as a Person entitled to limit liability under the relevant Convention on the Limitation of Liability for Maritime Claims or similar legislation; except to the extent that mandatory law of the country applies in the appropriate jurisdiction (in which case such law shall apply), the size of the fund to which the Carrier may limit liability shall be calculated by multiplying the limitation fund of the carrying Vessel at the relevant time by the number of Twenty Foot Equivalent Units ("TEUs") aboard at that time for which the Carrier is the contracting Carrier and dividing that total by the total number of TEUs aboard at that time. Nothing herein contained, expressed, implied or incorporated by reference, shall be deemed to waive or operate to deprive the Carrier of or lessen any of its rights, defences, immunities, exemptions, limitations, exonerations, liberties or benefits afforded by applicable legislation or by the Terms and Conditions hereof.

7. PACKAGE LIMITATION

- i. For shipments to and from the United States, neither the Carrier nor the Vessel shall in any event become liable for any loss of or damage to or in connection with the Carriage of Goods in an amount exceeding US\$500 (which is the package or shipping unit limitation under U.S. COGSA) per package or in the case of Goods not shipped in packages per customary freight unit.
- ii. In all other trades the Carrier's maximum liability shall be as provided in clause 7 save that the words "£100 lawful money of the United Kingdom" shall substitute the word "US\$500" wherever appearing therein.
- iii. Notwithstanding Clause 7 i) and ii), where the nature and value of Goods have been declared by the Shipper in writing to the Carrier before shipment and inserted in this Bill of Lading and the Shipper has paid additional Freight on such declared values, the Carrier's liability if any, shall not exceed the declared value and any partial loss or damage shall be adjusted pro-rata on the basis of such declared value.
- iv. Shipping unit in this Clause 7 includes customary freight unit and the term "unit" as used in the Hague Rules and Hague Visby Rules.
- This clause applies in addition to and shall not be construed as derogating from any defence or exclusion, restriction or limitation of liability available to the Carrier under the terms of this Bill of Lading or otherwise.

8. NOTICE OF LOSS, TIME BAR

- i. The Carrier shall be deemed prima facie to have delivered the Goods as described in the Bill of Lading unless notice of loss or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier at the time of removal of the Goods into the custody of the Person entitled to delivery thereof under this Bill of Lading or, if the loss or damage is not apparent, within three consecutive days thereafter.
- ii. The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods, unless suit

is brought in the proper forum and written notice thereof received by the Carrier within nine months after delivery of the Goods or the date when the Goods should have been delivered. In the event that such time period shall be found to be contrary to any law compulsorily applicable, the period prescribed by such law shall then apply but in that circumstance only.

9. Shipper-Packed Containers

- i. If a Container has not been filled, packed, stuffed or loaded by the Carrier, the Carrier shall not be liable for loss of or damage to the Goods and the Merchant shall indemnify the Carrier against any loss, damage, liability or expense incurred by the Carrier, if such loss, damage, liability or expense has been caused by:
 - a. the manner in which the Container has been filled, packed, stuffed or loaded; or
 - b. the unsuitability of the Goods for Carriage in Container; or
 - c. the unsuitability or defective condition of the Container arising without any want of due diligence on the part of the Carrier to make the Container reasonably fit for the purpose for which it is intended; or
 - d. the unsuitability or defective condition of the Container supplied by the Shipper.
- ii. The Shipper shall inspect Containers before stuffing them and its use of the Containers shall be prima facie evidence of their being suitable and not in a defective condition.

10. CARRIER'S CONTAINERS

- i. Each Merchant shall assume full responsibility and indemnify the Carrier for any loss of or damage howsoever caused to any Container or other equipment furnished by or on behalf of the Carrier which occurs while such Container or equipment is in the possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.
- ii. The Carrier shall not in any event be liable for and each Merchant shall be severally liable to indemnify and hold the Carrier harmless from and against any loss of or damage to property of other Persons or injuries to other Persons caused by Container(s) furnished by or on behalf of the Carrier or contents thereof while in the use or possession of any Merchant or any servant or agent of or contractor engaged by or on behalf of any Merchant.

11. INSPECTION OF GOODS

- i. The Carrier shall be entitled, but under no obligation, to open any package or Container at any time and to inspect the contents.
- ii. If by order of the authorities at any place, a Container has to be opened for the Goods to be inspected, the Carrier will not be liable for any loss or damage incurred as a result of any opening, unpacking, inspection or repacking. The Carrier shall be entitled to recover the cost of such opening, unpacking, inspection and repacking from the Merchant.

12. DESCRIPTION OF GOODS

- i. No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of the Goods, and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars furnished or made by or on behalf of the Shipper.
- ii. If any particulars of any Letter of Credit and/or Import Licence and/or Sale Contract and/or Invoice or Order number and/or details or any contract to which the Carrier is not a party are shown on the face of this Bill of Lading, such particulars are included solely at the request of the Merchant for its convenience. The Merchant agrees that the inclusion of such particulars shall not be regarded as a declaration of value and in no way affects the Carrier's liability under this Bill of Lading. The Merchant further agrees to indemnify the Carrier against all consequences of including such particulars in this Bill of Lading.
- iii. The Merchant acknowledges that, except when the provisions of Clause 7 iii) apply, the value of the Goods is unknown to the Carrier.

13. SHIPPER'S/MERCHANT'S RESPONSIBILITY

- i. The Shipper warrants to the Carrier that the particulars relating to the Goods as set out overleaf have been checked by the Shipper on receipt of this Bill of Lading and that such particulars and any other particulars furnished by or on behalf of the Shipper are correct.
- ii. The Merchant shall indemnify the Carrier against all loss, damage, liability and expenses arising or resulting from inaccuracies in or inadequacy of such particulars.
- iii. The Merchant shall comply with all regulations or requirements of customs, port and other authorities, and

shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including, without prejudice to the generality of the foregoing, the full return Freight for the Goods if returned, or if on-carried, the full Freight from the Port of Discharge or the Place of Delivery nominated herein to the amended Port of Discharge or the amended Place of Delivery) incurred or suffered by reason of any failure to so comply or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods, and shall indemnify the Carrier in respect of any such failure to comply or by reason of any such marking, numbering or addressing of the Goods.

14. FREIGHT, INCLUDING CHARGES

- i. Freight including charges shall be deemed fully earned on receipt of the Goods by the Carrier and shall be paid and non-returnable in any event.
- ii. The Freight has been calculated on the basis of particulars furnished by or on behalf of the Shipper. The Carrier may at any time open any Container or other package or unit in order to reweigh, remeasure or revalue the contents and if the particulars furnished by or on behalf of the Shipper are incorrect, it is agreed that a sum equal to either five times the difference between the correct Freight and the Freight charged or to double the correct Freight less the Freight charged, whichever sum is the smaller, and the expenses incurred in determining the correct particulars, shall be payable as liquidated damages to the Carrier.
- iii. Full Freight hereunder shall be due and payable at the place where this Bill of Lading is issued, by the Merchant without deduction on receipt of the Goods or part thereof by the Carrier for shipment. All charges due hereunder together with Freight (if not paid at the Port of Loading as aforesaid) shall be due from and payable on demand by the Merchant (who shall be jointly and severally liable to the Carrier therefore) at such port or place as the Carrier may require, Vessel or cargo lost or not lost from any cause whatsoever.
- iv. All other charges shall be paid to the Carrier before delivery of the Goods in full without offset, counterclaim or deduction, in the currency specified in the Carrier's Applicable Tariff, or, if no currency is so specified, in the lawful currency of the United States.
- v. The Merchant shall remain responsible for all Freight regardless whether the Bill of Lading be marked, in words or symbols, "Prepaid", "To be Prepaid" or "Collect".

15. Lien

The Carrier shall have a lien on all Goods, Containers and any documents relating thereto for all sums due under this contract or any other contract of undertaking to which the Merchant was party or otherwise involved, which lien shall also extend to general average contributions, salvage and the cost of recovering such sums, inclusive of attorney fees, and shall survive delivery. Such lien may be enforced by the Carrier by public auction or private treaty, without notice to the Merchant.

16. OPTIONAL STOWAGE AND DECK CARGO

- i. By tendering Goods for Carriage without any written request for Carriage in a specialized Container, or for Carriage otherwise than in a Container, the Merchant accepts that the Carriage may properly be undertaken in a general purpose Container or similar article of transport used to consolidate Goods.
- ii. Goods may be stowed by the Carrier in Containers, and Containers whether stowed by the Carrier or received fully stowed, may be carried on or under deck without notice unless on the face hereof it is specifically stipulated that the Containers or Goods will be carried under deck. The Merchant expressly agrees that cargo stowed in Containers and carried on deck is considered for all legal purposes to be cargo stowed under deck. Goods stowed in Containers on deck shall be subject to the legislation referred to in Clause 6 hereof and will contribute to General Average and receive compensation in General Average, as the case may be.
- iii. Goods (not being Goods stowed in Containers other than flats, pallets, or similar units) which are stated herein to be carried on deck and which are so carried, are carried without responsibility on the part of the Carrier for loss or damage of whatsoever nature arising during Carriage by sea whether caused by unseaworthiness or negligence or any other cause whatsoever.

17. METHODS AND ROUTES OF TRANSPORTATION

- i. The Carrier may at any time and without notice to the Merchant:
 - a. use any means of transport or storage whatsoever;
 - b. transfer the Goods from one conveyance to another;
 - c. transship the Goods;
 - d. undertake the Carriage of the Goods on a Vessel or Vessels in addition to and/or other than that named on the face hereof;
 - e. unpack and remove Goods which have been packed into Container and forward the same in a

- Container or otherwise;
- f. proceed by any route in its discretion (whether or not the nearest or most direct or customary or advertised route), at any speed, and proceed to or stay at any place or port whatsoever once or more often and in any order;
- g. load or unload the Goods at any place or port (whether or not such port is named overleaf as the Port of Loading or Port of Discharge) and store the Goods at any such place or port;
- h. comply with any orders or recommendations given by any government or authority, or any Person or body acting or purporting to act as or on behalf of such government or authority, or having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions;
- i. permit the Vessel to proceed with or without pilots, to tow or be towed, or to be dry-docked;
- ii. The liberties set out in Clause 17 i) may be invoked by the Carrier for any purpose whatsoever, whether or not connected with the Carriage of the Goods, including loading or unloading other Goods, bunkering, undergoing repairs, adjusting instruments, picking up or landing Persons involved with the operation or maintenance of the Vessel in all situations. Anything done in accordance with Clause 17 i) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.

18. MATTERS AFFECTING PERFORMANCE

- i. If at anytime the Carriage is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including by the condition of the Goods) whensoever and howsoever arising whether or not prior to the commencement of the Carriage or the making of the contract of Carriage, the Carrier may without notice to the Merchant:
 - a. abandon the Carriage of the Goods or any part of them and where reasonably possible place the Goods or any part of them at the Merchant's disposal at any place which the Carrier may deem safe and convenient, whereupon the responsibility of the Carrier in respect of such Goods shall cease; or
 - b. suspend Carriage of the Goods or any part of them and store them ashore or afloat upon the terms of the Bill of Lading and use reasonable endeavours to forward the Goods as soon as possible after the cause of the hindrance, risk, delay, difficulty or disadvantage has been removed, but the Carrier makes no representations as to the maximum period between such removal and the forwarding of the Goods to the Port of Discharge or Place of Delivery, whichever is applicable, named in this Bill of Lading.
- ii. In any event the Carrier shall be entitled to full Freight on Goods received for Carriage and the Merchant shall pay any additional cost resulting from the circumstances mentioned in Clause 18 i) ;
- iii. If the Carrier elects to suspend the Carriage under Clause 18 i) b) , this shall not prejudice the Carrier's rights subsequently to abandon Carriage under Clause 18 i) a).

19. DANGEROUS, HAZARDOUS OR NOXIOUS GOODS

- i. No Goods which are or may become inflammable, explosive, corrosive, noxious, hazardous, dangerous or damaging
- ii. (Including radio-active materials), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without its express consent in writing and without the Container or other covering in which the Goods are to be carried as well as the Goods themselves being distinctly marked on the outside so as to indicate the nature and character of any such Goods and so as to comply with any applicable laws, regulations or requirements. If any such Goods are delivered to the Carrier without such written consent and marking, or if in the opinion of the Carrier the Goods are or are liable to become of a dangerous or noxious nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to Freight and the Carrier shall be under no liability to make any general average contribution in respect of such Goods.
- iii. The Merchant undertakes that such Goods are packed in a manner adequate to withstand the risk of Carriage having regard to their nature and in compliance with all laws or regulations which may be applicable during Carriage and handling.
- iv. Whether or not the Merchant was aware of the nature of the Goods, the Merchant shall indemnify the Carrier against all claims, losses, damages, liabilities or expenses arising in consequence of the Carriage of such Goods. Nothing contained in this Clause shall deprive the Carrier of any of its rights provided for elsewhere in this Bill of Lading.

20. TEMPERATURE CONTROLLED CARGO

- i. Goods will not be provided temperature controlled, insulated or naturally ventilated stowage unless the Carrier has undertaken such special stowage in advance of the Carrier's receipt of the Goods, and in the absence of such agreement, the Merchant warrants that the Goods do not require such protection. The

- Carrier does not provide mechanically ventilated stowage, and does not furnish or maintain preservative gases in connection with temperature controlled stowage, and the Carrier assumes no responsibility for loss of or damage to Goods arising in whole or in part from any lack of such stowage.
- ii. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, breakdown or stoppage of the refrigerating machinery, plant, insulation, or of any apparatus of the Container, Vessel, conveyance or other facilities, unless the Carrier shall, before or at the beginning of the carriage, have failed to exercise due diligence to maintain any such equipment (other than Shipper-provided equipment) in an efficient state. If the Goods have been packed into a refrigerated Container, by or on behalf of the Shipper, it is the obligation of the Shipper to stow the contents properly and set the thermostatic controls exactly; and the Carrier shall not be liable for any loss of or damage to the Goods arising out of or resulting from the Shipper's failure in such obligations. If the Carrier has packed the Goods into a refrigerated Container, and a temperature or temperature range has been disclosed to the Carrier by the Shipper or its authorized representative, Carrier will set the thermostatic control accordingly.
 - iii. With respect to both Carrier and Shipper-packed Containers, where Carrier has undertaken, by special agreement, to carry the Goods at a particular temperature or temperature range, the Carrier undertakes only that the refrigeration equipment shall perform within the operating specifications of the equipment and makes no warranty or agreement with respect to the actual temperature of any commodity, fruit, vegetable, meat, fish or any perishable Goods within the Container.

21. DELIVERY

- i. Any mention herein of parties to be notified of the arrival of the Goods is solely for information of the Carrier, and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation hereunder notwithstanding any custom or agreement to the contrary.
- ii. If no Place of Delivery is named on the face hereof, the Carrier shall be at liberty to discharge the Goods at the Port of Discharge, without notice at or onto any wharf, craft or place, on any day and at any time, whereupon the liability of the Carrier (if any) in respect of the Goods discharged as aforesaid shall wholly cease, notwithstanding any charges, dues or other expenses that may be or become payable, unless and to the extent that any applicable compulsory law provides to the contrary (in which case the terms and conditions of this Bill of Lading shall continue during such additional compulsory period of responsibility). The Merchant shall take delivery of the Goods upon discharge.
- iii. If a Place of Delivery is named on the face hereof, the Merchant shall take delivery of the Goods within the time provided for in the Carrier's Applicable Tariff (see Clause 2).
- iv. If the delivery of the Goods is not taken by the Merchant when and where the Carrier is entitled to call upon the Merchant to take delivery thereof, the Carrier shall be entitled, without notice, to unpack the Goods if packed in Container and/or to store the Goods ashore, afloat, in the open or under cover, at the sole risk of the Merchant. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Carrier in respect of the Goods stored as aforesaid shall wholly cease, and the costs of such storage (if paid or payable by the Carrier or any agent or Sub-Contractor of the Carrier) shall forthwith upon demand be paid by the Merchant to the Carrier.
- v. If the Merchant fails to take delivery of the Goods within thirty days of delivery becoming due under Clause 21 ii) or iii), or if in the opinion of the Carrier they are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise in excess of their value, the Carrier may, without prejudice to any other rights which it may have against the Merchant, without notice and without any responsibility whatsoever attaching to him and at the sole risk and expense of the Merchant, sell, destroy or dispose of the Goods and apply any proceeds of sale in reduction of the sums due to the Carrier from the Merchant in respect of this Bill of Lading.
- vi. If, at the place where the Carrier is entitled to call upon the Merchant to take delivery of the Goods under Clause 21 ii) or iii), the Carrier is obliged to hand over the Goods into the custody of any customs, port or other authority, such hand-over shall constitute due delivery to the Merchant under this Bill of Lading.
- vii. Failure by the Merchant to take delivery of the Goods in accordance with the terms of this Clause, notwithstanding his having been notified of the availability of the Goods for delivery, shall constitute a waiver by the Merchant to the Carrier of any claim whatsoever relating to the Goods or the Carriage thereof.
- viii. In the event of the Carrier agreeing, at the request of the Merchant, to any change of destination, the terms of this Bill of Lading shall continue to apply until the Goods are delivered by the Carrier to the Merchant at the amended Port of Discharge or Place of Delivery, whichever is applicable, unless the Carrier specifically agrees in writing to the contrary.
- ix. The Merchant's attention is drawn to the stipulations concerning free storage time and demurrage contained in the Applicable Tariff.
- x. In the event that the consignee/receivers of the cargo require the Carrier to deliver the cargo at a port or place beyond the place of delivery originally designated in this Bill of Lading and the Carrier in its absolute discretion agrees to such further carriage, such further carriage will be undertaken on the basis that the Bill of Lading terms and conditions are to apply to such carriage irrespective of whether this Bill of Lading has been surrendered by the consignees/receivers or not, as if the ultimate destination agreed with the consignees/receivers had been entered on the front of this Bill of Lading as the place of delivery and is

thereby considered to be the place of delivery for the purposes of the clauses on the reverse side of this Bill of Lading.

22. TRANSHIPMENT BILLS OF LADING

If the Goods are to be transhipped via a connecting carrier to a destination point beyond the place of delivery stated on the face hereof, Carrier may, on behalf of the Merchant and acting solely as their agent, arrange for such beyond Carriage consistent with instructions received from the Merchant at their risk and expense. In such event, the Carrier may deliver the Goods to the connecting carrier without surrender of the Carrier's original, properly endorsed Bill of Lading and upon request by the Merchant, shall obtain the connecting carrier's acknowledgment that delivery of the Goods shall be made only upon surrender of the Carrier's original, properly endorsed Bill of Lading.

23. BOTH-TO-BLAME COLLISION

The Both-to-Blame Collision Clause published by the Baltic and International Maritime Council and obtainable from the Carrier or its agents upon request is hereby incorporated into this Bill of Lading.

24. GENERAL AVERAGE & SALVAGE

- I. General average shall be adjusted at any port or place at the option of the Carrier and subject to Clause 16 ii) in accordance with the York Antwerp Rules 1994, provided that where an adjustment is made in accordance with the law and practice of the United States of America or of any other country having the same or similar law or practice the following clause shall apply:-
New Jason Clause
 - a. in the event of accident, damage, peril or disaster, before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the Goods and the Merchant shall jointly and severally contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the Goods.
 - b. If a salving Vessel is owned or operated by the Carrier, salvage shall be paid for as fully as if the said salving Vessel belonged to strangers.
- II. If the Carrier delivers the Goods without obtaining security for general average contributions, the Merchant by taking delivery of the Goods, undertakes personal responsibility to pay such contributions and to provide such cash deposit or other security for the estimated amount of such contributions as the Carrier shall reasonably require.
- III. The Carrier shall be under no obligation to exercise any lien for general average contribution due to the Merchant.
- IV. In the event of the Master in his sole discretion or in consultation with owners considering that salvage services are needed, the merchant agrees that the Master may act as his agent to procure such services to Goods and that the Carrier may act as his agent to settle salvage remuneration, without any prior consultation with the Merchant.

25. WAR RISKS; GOVERNMENTAL ORDERS

The Carrier shall have liberty to carry Goods declared by any belligerent to be contraband and persons belonging to or intending to join the armed forces or governmental service of any belligerent; to sail armed or unarmed and with or without convoy; and to comply with any orders, requests or directions as to loading, departure, arrival, routes, ports of call, stoppage, discharge, destination, delivery or otherwise, howsoever given by the government of any nation or department thereof or any Person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or Person having, under the terms of the war risk insurance on the Vessel, the right to give such orders, requests or directions. Delivery or other disposition of the Goods in accordance with such orders, requests or directions shall constitute performance of the Carrier's delivery obligations under the terms of this Bill of Lading, and all responsibility of the Carrier, in whatever capacity, shall terminate upon such delivery or other disposition.

26. VARIATION OF THE CONTRACT

No servant or agent of the Carrier shall have the power to waive or vary any term of this Bill of Lading unless such waiver or variation is in writing and is specifically authorized or ratified in writing by the Carrier.

27. VALIDITY

In the event that anything herein contained is inconsistent with any applicable international conventional or national law which cannot be departed from by private contract, the provisions hereof shall to the extent of each inconsistency but no further be null and void.

28. LAW AND JURISDICTION**i. Governing Law**

Insofar as anything has not been dealt with by the terms and conditions of this Bill of Lading, Singapore law shall apply. Singapore law shall in any event apply in interpreting the terms and conditions hereof.

ii. Jurisdiction

All disputes relating to this Bill of Lading shall be determined by the Courts of Singapore to the exclusion of the jurisdiction of the courts of any other country provided always that the Carrier may in its absolute and sole discretion invoke or voluntarily submit to the jurisdiction of the Courts of any other country which, but for the terms of this Bill of Lading, could properly assume jurisdiction to hear and determine such disputes, but shall not constitute a waiver of the terms of this provision in any other instance.

iii. Notwithstanding Clause 28 i) and ii), if Carriage includes Carriage to, from or through a port in the United States of America, the Merchant may refer any claim or dispute to the United States District Court for the Southern District of New York in accordance with the laws of the United States of America.